



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPLICATION (ABA) NO.159 OF 2024
(Radheshyam Harilal Bandhe Vs. State of Maharashtra)

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. I.S. Ghagarkar, Advocate for the applicant.
Ms H.N. Prabhu, APP for the State.
Mr. N.D. Dawda, Advocate for Assist to Prosecutor.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- JUNE 18, 2024.

By this application, the applicant is seeking pre-arrest bail in connection with Crime No.565/2023, registered with Police Station Tumsar, District Bhandara by for the offence punishable under Sections 406 and 420 of the Indian Penal Code.

2. The accusation against the present applicant is on the basis of report lodged by Atul Jageshwar Waghmare alleging that the present applicant was involved in online trading and induced the complainant for the said online trading, and therefore, the complainant has invested the amount. The applicant has kept the Password and User id with him and obtained the amount from the complainant and other prosecution witnesses and withdrawn the same and thereby duped the complainant and other witnesses. On the basis of said report, police have registered the crime against the present applicant.

3. Learned Counsel for the applicant submitted that the applicant is not at all involved in the said crime. It was the complainant who has invested the amount at his own in online trading and the password is issued to the complainant only. As far as the custodial interrogation is concerned which is not required as Investigating Officer has already recorded the relevant statements of the witnesses, collected the account details of the accounts of the present applicant as well as the complainant. He further submitted that after he is released on ad-interim anticipatory bail he has cooperated with the investigating agency. Though he is attending the police station the Investigating Officer has not seized either his mobile phone or not interrogated with him. They seems that the custodial interrogation of the present applicant is not required. In view of that, he be protected by granting anticipatory bail.

4. Learned APP and learned Counsel for the complainant strongly opposed the said application on the ground that huge amount is involved. In view of that, the custodial interrogation of the present applicant is required, and therefore, the prayer for grant of anticipatory bail deserves to be rejected.

5. I have heard learned Counsel for both the parties. Perused the investigation papers from which it reveals that allegation against the present applicant is that he has induced the complainant and other prosecution

witnesses to invest the amount. On his inducement the complainant and other prosecution witnesses have invested the amount. As the complainant and other prosecution witnesses have not received the profit, and therefore, this false FIR came to be lodged against the present applicant. During investigation, the Investigating Officer has recorded the statements of various witnesses from which it reveals that it was the present applicant who has induced them and therefore, they have invested the amount. In view of the observation of the Hon'ble Apex Court in the case of ***Satender Kumar Antil Vs. Central Bureau of Investigation and another***, [2022 *LiveLaw (SC) 577*] wherein the Hon'ble Apex Court held that Section 41 under Chapter V of the Code deals with the arrest of persons. Even for a cognizable offence, an arrest is not mandatory as can be seen from the mandate of this provision. If the officer is satisfied that a person has committed a cognizable offence, punishable with imprisonment for a term which may be less than seven years, or which may extend to the said period, with or without fine, an arrest could only follow when he is satisfied that there is a reason to believe or suspect, that the said person has committed an offence, and there is a necessity for an arrest. Thus, the Apex Court has further observed that this provision mandates the police officer to record his reasons in writing while making the arrest. As there was no compliance therefore, the applicant was released on ad-interim anticipatory bail. Thereafter notice

was issued to the present applicant. On perusal of the notice, it nowhere reveals that the Investigating Officer has carved out the grounds for the arrest of the present applicant. The applicant has produced on record the extract of the diaries which shows that as per the direction of this Court he has attended the concerned police station and cooperated with the investigating agency. Considering all these aspects the ad-interim protection granted to the present applicant deserves to be confirmed.

6. Hence, the application is allowed and the interim protection granted to the applicant vide order dated 28/03/2024 is hereby confirmed on the same terms and conditions.

7. The applicant shall attend the concerned police station as directed, till filing of the charge-sheet.

8. The application is disposed of accordingly.

(URMILA JOSHI-PHALKE, J.)