



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

CRIMINAL APPLICATION (ABA) NO.170 OF 2024

(Jyoti w/o Ramprasad Makde and anr. Vs. The 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. S.G. Karmarkar, Advocate for the applicants.
Ms Prabhu, APP for the State.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- APRIL 3, 2024.

The application is for grant of anticipatory bail. The applicant is apprehending arrest at the hands of police in connection with Crime No.366/2023 registered with Police Station Tumsar, District Bhandara for the offence punishable under Sections 406 and 420 read with Section 34 of the Indian Penal Code.

2. The accusation against the present applicant on the basis of report lodged by Deepa Dinesh Dongare. It is alleged that she as well as other prosecution witnesses got acquaintance with applicant No.1 and she insisted them to obtain the loan from various Pat-Sanstha and banks and from them she obtained the amount of Rs.43,13,000/- and not returned back. On the basis of said report, police have registered the crime against the present applicants.

3. Learned Counsel for the applicants submitted that the recitals of the FIR shows that the informant and

the other witnesses have obtained loan. There is no material to show that said loan amount was disbursed in the account of the present applicants. In fact, there is no material to connect the present applicants with the alleged offence. As far as the custodial interrogation as claimed by the prosecution is concerned which is not required and applicants cannot be sent behind bar to recover the said amount. In view of that, he prays for granting anticipatory bail to the present applicants.

4. Learned APP strongly opposed the application on the ground that the attempt was made by the Investigating Officer to serve the notice under Section 41 of the Cr.PC. to the present applicants but they could not serve as the applicants were not found on the address. She submitted that considering the allegations which shows that applicant No.1 not only insisted the informant and other prosecution witnesses to obtain the loan but the said loan amount was grabbed by her. Now, the prosecution witnesses have to repay the said amount. In view of that, the custodial interrogation of the present applicant is required, and therefore, the application deserves to be rejected.

5. Having heard learned Counsel for the applicant and learned APP for the State. Perused the investigation papers. Considering the allegations made against the present applicant which shows that the nature of the allegation is that applicant No.1 has insisted the

prosecution witnesses to obtain the loan. As far as the investigation carried out by the Investigating Officer is concerned, it nowhere shows that the said amount was disbursed or paid to the present applicants. However, at this stage, the statements of the witnesses are to be taken into consideration. As far as the custodial interrogation of the applicants is concerned which is not required as this is not a recovery proceeding. Moreover, the offence alleged are punishable with imprisonment upto 7 years. In view of the observation of the Hon'ble Apex Court in ***Satender Kumar Antil Vs. Central Bureau of Investigation, [(2022) 10 SCC 51]*** wherein it is 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. Such necessity is drawn to prevent the committing of any further offence, for a proper investigation, and to prevent him/her from either disappearing or tampering with the evidence. This provision mandates the police officer to record his reasons in writing while making the arrest. Thus, a police officer is duty-bound to record the

reasons for arrest in writing. The consequence of non-compliance with Section 41 of Cr.P.C. shall certainly inure to the benefit of the person suspected of the offence.

6. In the present case, learned APP vehemently submitted that attempt was made to serve the notice on the applicant but the Investigating Officer could not serve. Perused the notice under Section 41 of the Cr.P.C. wherein it is only mentioned that the applicant shall remain present before the Investigating Officer. No reasons are assigned in the said notice. The general diary entries taken by the Investigating Officer shows that he tried to serve the notice but he could not, as the applicants are not found on the given address. Considering the recitals of the notice admittedly it is not the compliance in view of the judgment of the Hon'ble Apex Court. Thus, there is not compliance under Section 41 of the Cr.P.C. In view of that the observation of the Hon'ble Apex Court in view of the non-compliance of Section 41 of Cr.P.C. the applicants have made out the case for grant of pre-arrest bail. Accordingly, I proceed to pass the following order:

(i) The application is allowed.

(ii) In the event of arrest, the applicants –
1) Jyoti w/o Ramprasad Makde and
2) Ramprasad s/o Shamrao Makde in connection with Crime No.366/2023 registered with Police Station Tumsar, District Bhandara for the offence punishable under

Sections 406 and 420 read with Section 34 of the Indian Penal Code, be released on anticipatory bail on executing a PR.Bond in the sum of Rs.25,000/- each with one solvent surety each, in the like amount.

(iii) The applicants shall attend the concerned police station twice in a week i.e. on every Sunday and Thursday between 10.00 a.m. and 1.00 p.m. till further orders and shall cooperate with the investigating agency.

(iv) The applicant shall not directly or indirectly make any inducement and threat or promise to any person acquainted with the facts of the present case.

7. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)

**Divya*