IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (ABA) NO.165 OF 2024

Mukesh Mishra
Vs.
State of Maharashtra, Through Cyber Police Station Chaoni Sadar, Nagpur

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

Mr. M. I. Haque, Advocate for applicant.
Mr. N. B. Jawade, APP for respondent/State.
Ms. Gulfshan Ansari, Advocate h/f Mr. Mir Nagman Ali, Advocate for assist to prosecution.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 17 /04/2024

1. Apprehending the arrest at the hands of police in connection with Crime No.31/2023 registered with Cyber Police Station Chaoni Sadar, Nagpur for the offence punishable under Sections 419 and 420 of the Indian Penal Code and under Sections 66(c) and 66(d) of the Information Technology Act, the present applicant approached this Court for grant of pre-arrest bail.

2. The accusation against the present applicant is that on the basis of report lodged by Dr. Ashok Das Sharma, who alleged that on 30.05.2022 he received a phone call from the office of the Insurance Ombudsmen Hydrabad. The collar introduced himself as the Grievance Redressal Officer. He had further stated that the two insurance policies

of the complainant has lapsed for which he is required to pay Rs.27,900/- and Rs.69,300/-. The complainant accordingly paid the said amount. In September, 2022, he again received the another phone call from the office of the same Insurance stating him that the complainant is entitled to loan claim amount of Rs.48,00,000/- for which he is required to pay an amount of Rs.7,21,300/-. After interval of some days, he received a phone call to pay the amount of G.S.T. of Rs.5,74,889/-. Thereafter, the collar asked the complainant to pay Rs.6,92,000/- towards policy holder fund, Rs.3,83,000/- towards stamp duty charges and Rs.7,59,959/- towards interstate G.S.T and Rs.2,00,700/- towards no claim amount, Rs.4,93,000/- towards long term capital gain tax and Rs.2,92,000/- towards the processing fees. The collar further told the complainant that these entire amount is refundable. Thereafter, the complainant received email stating him that he would be receiving an amount of Rs.98,64,835/- and also informed the file number of the same. On 12.05.2023, the complainant once again received a phone call where the caller had asked for further money to pay the T.D.S. Thereafter, the complainant tried to call on those mobile numbers, but the numbers were switched off. Thereafter, the complainant realized that he has been duped of Rs.42,14,048/-. On the basis of which, the crime is registered.

3. Initially, the offence was registered for the offence punishable under Sections 419 and 420 of the Indian Penal Code. During the investigation, it transpired that a fake email I.D. is created to communicate with various victims and thereby the offences are registered under the provisions of the Information Technology Act.

4. Learned Counsel for the applicant submitted that as far as the applicant is concerned, he is a law student and not involved in the said crime. He is falsely implicated in the alleged offence. There is no iota of evidence to connect him with the alleged offence. He has not made any phone call or he has not received any amount from the said transactions. Considering the fact that the applicant is a law student and from the investigation papers his involvement is not revealed, in view of that he be protected by granting anticipatory bail.

5. Learned APP strongly opposed the said application on the ground that during the investigation the Investigation Officer recorded the relevant statements of the witnesses and also arrested some of the accused. The notice under Section 41 of the Code of Criminal Procedure (Cr.P.C.) is also given to the present applicant, but present applicant has not cooperated with the investigating agency and has not attended the Police Station. During the investigation, it transpired that various

calls were made to the complainant and the huge amount was obtained from the complainant, to obtain the said amount, the account numbers from Delhi, Uttar Pradesh and Haryana are used. During the investigation, it further revealed that the applicant has made a phone call by using the number of the other witnesses and obtained the various documents through WhatsApp on the said numbers and used the said documents for opening of the account. He submitted that considering the *prima facie* material against the present applicant and considering the nature of the offence, which is an economic offence, the custodial interrogation is required, in view of that, the application deserves to be rejected.

6. Having heard the learned Counsel for the applicant and after going through the investigation papers, it reveals from the investigation papers that the complainant has received various calls on the pretext that the collar has introduced himself as an employee of the Insurance Company and for one or the other pretext, obtained the huge amount from the complainant. During the investigation, it further reveals that present applicant has used the mobile phone of one Deepak Pashupatinath Pande, whose statement is recorded. From his statement, it reveals that the applicant has not only a made phone call from his mobile phone, but also obtained the various documents on the WhatsApp number of said Deepak Pashupatinath Pande and by using the said

documents, he has opened the account and availed the facility of cheque book and ATM. It further reveals that in exchange of the said assistance by Deepak Pashupatinath Pande, the applicant has paid him Rs.25,000/- and Rs.1,50,000/-. Thus, the involvement of the present applicant is revealed not only from the statement of said Deepak Pashupatinath Pande, but from the statement of Jaysingh Lambha also. As far as the contention of the learned Counsel for the applicant that the applicant is ready to cooperate with the investigating agency is also falsified proving the investigating papers, as the investigation paper shows that though notice is issued to the present applicant under Section 41A of Cr.P.C., the applicant has not cooperated with the investigating agency and has not attended the Police Station. On the contrary, when the Investigating Officer has visited his resident at Delhi, he slit his throat by sharp weapon, due to which he was admitted in the hospital. Thus, considering the *prima facie* case is made out against the present applicant and considering the fact that the applicant has not cooperate with the investigating agency and the nature of the offence is an economic offence, for which the custodial interrogation of the applicant is required.

7. The consideration for grant of anticipatory bail and bail under Section 439 of Cr.P.C. are different. It is well settled that while considering the

application for grant of anticipatory bail the consideration that the gravity of offence, the offence for which the punishment is provided and the extent of the punishment and the likelihood of the person fleeing away from the justice and apprehension of tampering of the witnesses to be taken into consideration. Here the conduct of the present applicant shows that neither he has responded the notice issued under Section 41A nor he attended the Police Station and when police approached to him, he attempted to commit suicide.

8. The Hon'ble Apex has dealt with the scope of Section 41 in **Satender Kumar Antil Vs. Central Bureau of Investigation and another** reported in **2022 LiveLaw (SC) 577** 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. 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 shall certainly inure to the benefit of the person suspected of the offence. Section 41A deals with the procedure for appearance before the police officer who is required to issue a notice to the person against whom a reasonable complaint has been made, or credible information has been received or a reasonable suspicion exists that he has committed a cognizable offence.

9. From a plain reading of the aforesaid provision, it is evident that a person accused of an offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years with or without fine, cannot be arrested by the police officer only on his satisfaction that such person had committed the offence punishable as aforesaid. A police officer before arrest, in such cases has to be further satisfied that such arrest is necessary to prevent such person from committing any further offence.

10. In the light of the above observations of the Hon'ble Apex Court if the facts of the present case are taken into consideration the involvement of the present applicant revealed in the economic offence. Considering the nature of the offence, the notice was issued to the present applicant, the applicant has not complied with the notice and has not cooperated with the investigating agency. From

the statements of the witnesses it reveals that the applicant has played the vital role in committing the said crime, which is in the nature of the Cyber crime and the huge amount was obtained from the complainant. The recovery of the amount is also one of the aspect. Mere custodial interrogation is not required, is not sufficient to grant anticipatory bail to the present applicant. In view of that, no case is made out for grant of anticipatory bail, the application deserves to be rejected. Accordingly, the application is rejected.

(URMILA JOSHI-PHALKE, J.)

Sarkate