



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

CRIMINAL APPLICATION (ABA) NO. 176 OF 2024

Subhash Suresh Dhamolkar V/s 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. H.V. Dhage, counsel for applicant.

Mrs. H.N. Prabhu, APP for non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 22/03/2024.

1. The application is for pre-arrest bail in connection with Crime No. 54/2024 registered under Sections 420, 489-E read with Section 34 of the Indian Penal Code, 1860 and Sections 66(C) and 66(D) of the Information Technology Act, 2000.

2. As per the allegation by the complainant that he has received one link on the WhatsApp application on his mobile and filled up the form shown in the link, and thereafter he attended the phone calls of unknown persons, who told him that he won the Gift Lottery of Rs. 10,00,000/- and for receiving the same, he should pay Rs. 1,50,000/- as processing fees, and on several calls attended by the complainant from the unknown persons. As per their contention, he has paid the cash of Rs. 1,50,000/- to the unknown person on their demand. Thereafter, two unknown persons handed over to them one bag containing amount of Rs. 10,00,000/-, wherein

the counterfeit currency notes of Rs. 500/- were received back. On the basis of said report, the police have registered the crime against the present applicant.

3. Learned counsel for the applicant submitted that the entire counterfeit currency notes are already received, now the custodial interrogation of the present applicant is not required. He further submitted that the name of the present applicant is not mentioned in the FIR, and in view of that, he be protected by granting anticipatory bail.

4. Learned APP strongly opposed the said application and submitted that considering the nature of the offence that counterfeit currency notes are attempted to circulate, and the same are found in possession of the co-accused as well as the present applicant. In view of that, the application be rejected.

5. Having heard learned counsel for the applicant and learned APP for the State, perused the recitals of the FIR. From the recitals of the FIR, it reveals that some unknown persons tried to circulate the counterfeit currency notes of Rs. 10,00,000/-and handed over to the complainant, on the pretext of giving the amount of lottery to him. Thus, custodial interrogation of the present applicant is required in this case. However, the investigating officer by following the guidelines issued by the Hon'ble Apex Court in the case of ***Satender Kumar Antil Vs Central Bureau of Investigation reported in***

(2022) 10 SCC 51, wherein it is held that 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 instigation, and to prevent him/her from either disappearing or tampering with the evidence. He/she can also be arrested to prevent such person from making any inducement, threat, or promise to any person according to the facts, so as to dissuade him from disclosing said facts either to the Court or to the Police Officer. This provision mandates the Police Officer to record in writing while making the arrest.

6. Considering the allegation against the present applicant, which shows the involvement of the present applicant in procuring the counterfeit currency notes and circulating the same. At this stage, no case is made for the grant of anticipatory bail, and discretion cannot be used in favour of the present applicant. However, before arresting the applicant, the investigating officer shall follow the guidelines issued by the Hon'ble Apex Court by recording

the reasons for what purpose the arrest of the present applicant is required.

In view of the above, application is **rejected**.

[URMILA JOSHI-PHALKE, J]