



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

CRIMINAL APPLICATION (ABA) NO.210 OF 2024

Ajinkya s/o Balkrushna Kadam and others
Vs.

State of Maharashtra, Through Police Station Officer, Police Station,
Hudkeshwar, Nagpur City, Nagpur

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

Court's or Judge's orders

Mr. Anirudh Ananthakrishnan, Advocate for applicant.
Ms. Shamshi Haider, APP for respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 26 /04/2024

1. Apprehending the arrest at the hands of police in connection with Crime No.970/2023 registered with Police Station Hudkeshwar, Nagpur City, for the offences punishable under Sections 406 and 420 read with Section 34 of the Indian Penal Code, the applicants approached this Court for grant of pre-arrest bail.

2. Learned Counsel for the applicant submitted that as per the accusation, the crime is registered on the basis of report lodged by one Leena Chhatrapal Bandbuche, on an allegation that she got acquaintance with the present applicants on Jivansathi.com website. As per her allegation, present applicant No.1 has sent a request to her in regard to the marriage and he has mentioned that he has divorced his wife, thereafter there was a

communication between her and applicants. She has invested some amount in the company of the present applicant No.1 and subsequently, it reveals to her that the applicant No.1 has decided to stay along with his wife and therefore, there was no further communication as to the marriage with the informant. She alleged that the invested amount was not returned to her. He submitted that as far as the allegations are concerned, she has invested the amount in the company of the applicant No.1 and the entire evidence is in the nature of the documentary evidence. The custodial interrogation of the present applicants is not required. He submitted that the relevant statements are already recorded by the Investigating Officer. The applicants have cooperated with the investigating agency as directed by this Court. Thus, custodial interrogation is not required and therefore, he be protected by granting anticipatory bail.

3. Learned APP strongly opposed the said application on the ground that there are serious allegations against the present applicants on the pretext of marriage, they have obtained the investment from the present informant and thereafter, duped her therefore, their custodial interrogation is required.

4. Having heard the learned Counsel for the applicants and learned APP for the State. There is no

dispute as to the fact that the informant has invested the amount in the company of the present applicant No.1. As far as the allegations are concerned, immediate custodial interrogation of the present applicants is not required. Moreover, the offence alleged are punishable with imprisonment up to seven years. In view of the decision of the Hon'ble Apex Court in **Satender Kumar Antil Vs. Central Bureau of Investigation** reported in **(2022) LiveLive (SC) 577**, the Investigating Officer is under obligation to comply by issuing notice under Section 41 of the Code of Criminal Procedure.

5. The Hon'ble Apex Court in para No.21 of the judgment 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.

6. 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.

7. In view of the observations of the Hon'ble Apex Court and considering the applicants are cooperating with the investigating agency and complying the direction of this Court, the custodial interrogation of the present applicants is not required. The interim protection granted to the present applicants deserves to be confirmed. Accordingly, I proceed to pass following order.

ORDER

(i) The application is allowed.

(ii) The interim protection granted to the present applicant **No.(1) Ajinkya s/o Balkrushna Kadam, No.(2) Akash s/o Mohan Thorat and No.(3) Pramod s/o Shivaji Patil**, in connection with Crime No.970/2023 registered with Police Station Hudkeshwar, Nagpur City for the offences punishable under Sections 406 and 420 read with Section 34 of the Indian Penal Code, is hereby confirmed subject to the similar terms and conditions.

8. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)