



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

**CRIMINAL APPLICATION (ABA) NO.224 OF 2023**

Ashish s/o Chandrakumar Tekani

Vs.

State of Maharashtra, Through Police Station Officer, Shantinagar Police  
Station, Shantinagar Nagpur

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

Court's or Judge's orders

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Mr. S. V. Sirpurkar, Advocate for applicant.

Mr. N. R. Rode, APP for respondent/State.

**CORAM : URMILA JOSHI-PHALKE, J.**

**DATED : 22/02/2024**

1. Apprehending the arrest at the hands of police in connection with Crime No.60/2023 registered with Police Station, Shantinagar, District Nagpur City for the offences punishable under Section 294, 406, 420 and 506 of Indian Penal Code, the applicant approached this Court for grant of pre-arrest bail.

2. The applicant is apprehending arrest at the hands of police, as crime is registered on the basis of report lodged by Vilas Shankar Puneekar alleging that on 07.08.2021 he gave an amount of Rs.2,50,000/- to the applicant to invest in the share market, as the applicant possess good knowledge about the investment in share market. After few days, the applicant returned profit of Rs.30,000/- on the above invested amount. Thereafter, the informant along

with the other friends invested the amount of Rs.38,65,000/-, however, they have not received any returns. On the contrary, the applicant abused them, when they visited his house. On the basis of the said report, police have registered the crime against the present applicant.

3. Learned Counsel Mr. Sirpurkar for the applicant submitted that considering that the offence alleged is punishable with imprisonment of seven years and in view of the observation of the Hon'ble Apex Court in **Satender Kumar Antil V/s Central Bureau of Investigation and another**; reported in **(2022) 10 SCC 51** and **Arnesh Kumar V/s State of Bihar**, reported in **(2014) 8 SCC 273**. This Court protected the present applicant by granting ad-interim anticipatory bail. He further submitted that the applicant has attended the Police Station and cooperated with the investigating agency. As far as the interrogation with the present applicant is concerned, which is already carried out and custodial interrogation of the present applicant is not required. He further submitted that there is no notice under Section 41-A of the Code of Criminal Procedure. Thus, in view of the observation of the Hon'ble Apex Court that on failure to comply with the directions the accused is entitled for the benefit of the bail. Now, investigation is almost completed. The custodial interrogation of the present applicant is not required and he be protected by confirming pre-arrest bail.

4. Learned APP strongly opposed the application and submitted that after verifying the bank details of the respective victims, it reveals that payment is made by them to the present applicant in the account which is given by the present applicant. He further submitted that though applicant has attended the Police Station but not cooperated with the investigating agency. The amount of Rs.38,00,000/- is involved. In view of that, the custodial interrogation is required and the protection granted to the present applicant deserves to be rejected.

5. Having heard the learned Counsel for the applicant and learned APP for the State, perused the investigating papers. From the allegation, it reveals that it was the informant who has invested the amount by handing over it to the present applicant to invest it in the share market. Initially, he has also received the profit of Rs.30,000/-. As per the allegation, subsequently he has invested more amount and no returns or benefits are received by him. While considering the application for bail, this Court has already observed while protecting him by granting ad-interim protection that the Hon'ble Apex Court has issued the guidelines in the case of **Satender Kumar Antil** (referred supra) wherein it is held that the Police Officer has to take a decision whether or not the accused should be arrested. He has to record the reasons in writing in support of the

decision. If the Police Officer takes decision 'not to arrest' the accused, the said decision shall be communicated to the concerned Magistrate within two weeks from the date of institution of the case/FIR. This decision, however, should be taken as expeditiously as possible, for the reason that the best evidence could be collected immediately after commission of the offence and further to rule out the possibility of tampering with the evidence.

6. The Apex Court has then warned that failure to comply with directions shall render the Police Officer concerned liable for departmental action. The Apex Court further expects the trial Courts to come down heavily on the Police Officers effecting arrest without due compliance of Sections 41 and 41A of the Code.

7. After observation of this Court in the light of the guidelines issued by the Hon'ble Apex Court no notice under Section 41A is issued by the Investigating Officer. Neither any reasons are assigned to show that for what purpose the custody of the present applicant is required. From the investigation papers, it reveal that the investigation is almost on the verge of its completion. The further custodial interrogation of the present applicant is not required. Moreover, in view of the observation of the Hon'ble Apex Court, as there is no compliance under Section 41A of Cr. P.C. the applicant shall be

protected by granting anticipatory bail. In view of that, I proceed to pass following order.

**ORDER**

(i) The application is allowed.

(ii) In the event of his arrest, the applicant **Ashish s/o Chandrakumar Tekani** be released on anticipatory bail, in connection with Crime No.60/2023 registered with Police Station, Shantinagar, Nagpur City for the offences punishable under Section 294, 406, 420 and 506 of Indian Penal Code, on executing PR bond in the sum of Rs.25,000/- with one solvent surety in the like amount.

(iii) The applicant shall attend Police Station once in a week on Sunday between 10.00 a.m. to 1.00 p.m. and shall cooperate with the investigating agency.

(iv) The applicant shall not induce threat or promise any witnesses who are acquainted with the facts of the case.

The application is disposed of.

**(URMILA JOSHI-PHALKE, J.)**