



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

CRIMINAL APPLICATION (ABA) NO. 248 OF 2024

Sau. Asha w/o Vilas Khadse 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. Ajay S. Londhe, counsel for the applicant.

Mrs. Swati Kolhe, APP for non-applicant/State

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 03/05/2024.

1. Apprehending the arrest at the hands of police, in connection with Crime No. 49/2024 registered with Police Station Shegaon, Tq. Khamgaon, District Buldhana for the offence punishable under Section 420 read with Section 34 of the Indian Penal Code, 1860, the present applicant approached to this Court for grant of pre-arrest bail.

2. As per the accusation, the co-accused induced the informant to invest the amount of Rs. 5 Lacks, on which she would get Rs. 15 Lacks from the Manager of the Institution. It is alleged that the informant was well acquainted with the co-accused and therefore, by believing the words, she has invested the amount, and she was duped by the co-accused. On the basis of which, the crime is registered against the present applicant.

3. It is submitted by learned counsel for the applicant that the co-accused is already released on anticipatory bail, as far as the present applicant is concerned, her name is not

mentioned in the FIR. No specific role is attributed to her. Moreover, the offences are not punishable with the imprisonment more than seven years. In view of that, the interim protection granted to the applicant deserves to be confirmed.

4. Learned APP strongly opposed the application and submitted that considering the gravity of the offence, that investment of the informant was grabbed by the present applicant and other co-accused, therefore custodial interrogation is required.

5. Having heard learned counsel for the applicant and learned APP for the State. The offences alleged are under Section 420 read with Section 34 of the Indian Penal Code. In view of the observations of the Hon'ble Apex Court in the case of *Satender Kumar Antil Vs. Central Bureau of Investigation reported in (2022) 10 SCC 51* wherein the scope of Section 41 is dealt by the Hon'ble Apex Court and 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 would only follow when he is satisfied that there is a reason to believe or suspect, that the said person has committed an offence. The investigation officer has to comply with this provision, this

provision mandates the police officer to record his reasons in writing while making the arrest. Thus, police officer is duty-bound to record the reasons for arrest in writing. Similarly, the police officer shall record reasons when he/she chooses not to arrest. There is no requirement of the aforesaid procedure when the offence alleged is more than seven years, among other reasons.

6. Here in the present case, there is non-compliance with Section 41 which certainly shall inure to the benefit of the present applicant. Moreover, considering the allegation that the amount is not received by the present applicant, except the allegation that the present applicant has induced the informant to invest the amount. There is no other material to connect her with the alleged offence. Now, the investigation is practically completed, as far as the custodial interrogation of the applicant is concerned, the applicant has attended the concerned Police Station and cooperated with the investigating agency. In view of that, interim protection granted to the present applicant deserves to be confirmed. Accordingly, I proceed to pass the following order:

ORDER

- a] The criminal application is **allowed**.
- b] In the event of arrest, in connection with Crime No.49/2024 registered with Police Station Shegaon for the offence punishable under Section 420 read with Section 34 of the Indian Penal Code, the

applicant – **Asha w/o Vilas Khadse** shall be released on anticipatory bail on executing PR bond in the sum of Rs.25,000/- with one solvent surety in the like amount.

- c] The applicant shall attend the concerned Police Station once in a week on Monday between 10.00 am. to 1.00 p.m. and the Investigating Officer shall record her presence.
- d] The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the case.

The criminal application is **disposed of**.

[URMILA JOSHI-PHALKE, J.]