



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

CRIMINAL APPLICATION (ABA) NO. 333 OF 2024

Sandip Sagar Yadav and another. 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. R.M. Daga, counsel for the applicants.

Mr. A.G.Mate, APP for the non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 28/06/2024.

1. The applicants are seeking pre-arrest bail, in connection with crime No. 214/2024 registered with Police Station Wathoda, District Nagpur for the offence punishable under Section 420, 170 read with Section 34 of the Indian Penal Code, 1860 (for short 'the IPC') and subsequently, the offences under Sections 364-A, 392 of the IPC are added

2. Mr. R.M. Daga, learned counsel for the applicants submitted that, as per the allegation, the informant was found chit - chatting with one girl in a car. At that time, two persons approached them and told them that they were serving as police, and they will file the prosecution against them under the provisions of the Protection of Children from Sexual Offences (POSCO) Act, 2012 and obtained a golden chain from him worth of Rs. 1,80,000/-. On the basis of said report, the police have registered the crime against the present applicants.

3. The learned counsel for the applicants submitted that, as far as the recovery of the chain is concerned, which is already been seized by the police. The mobile phones of the applicants is also seized, therefore, the part of the custodial interrogation is already over.

4. He further submitted that while considering the interim application, this Court has considered the various judgments of the Hon'ble Apex Court and released the applicants on ad-interim protection. Now, considering the settled law that merely because the prosecution is claiming the custodial interrogation is required is not sufficient, the State would have to show or indicate more than prima-facie case, why the custodial interrogation of the accused is required for the purpose of investigation. The said material is not placed on record by the prosecution as far as the reply of the prosecution is concerned, which shows that the cellphone is recovered as well as the golden chain is also recovered from the applicants. Thus, considering these facts, the custodial interrogation of the applicants is not required, and therefore, the interim protection granted to the present applicants deserves to be confirmed.

5. The learned APP strongly opposed the said application on the ground that, though the golden chain and cellphones are recovered, but the custodial interrogation is required as there is an allegation of demand of Rs. 1 Lakhs from the informant, and therefore, the application deserves to be rejected.

6. After hearing learned counsel for the applicants and learned APP for the State, perused the interim order passed by this Court, wherein it is specifically with the reference of the various decisions of the Hon'ble Apex Court held that, there is no gainsaying that custodial interrogation is one of the effective modes of investigation into the alleged crime. It is equally true that just because, custodial interrogation is not required, that by itself may also not be a ground to release an accused on anticipatory bail, if the offences are of a serious nature. However, mere assertions on the part of the State while opposing the plea for anticipatory bail that custodial interrogation is required would not be sufficient. The State would have to show or indicate more than prima facie why the custodial interrogation of the accused is required for the purpose of the investigation.

7. In the light of the above observations and the facts are taken into consideration, admittedly the incriminating articles are already recovered. As far as the custodial interrogation part is concerned, no material is placed in support of the contention, why the custodial interrogation is required, hence, the application deserves to be allowed. Accordingly, I proceed to pass the following order:

- a] The criminal application is allowed.
- b] In the event of arrest, in connection with crime No. 214/2024 registered with Police Station Wathoda, District Nagpur for the offence punishable under Section 420, 170, 364-A, 392

read with Section 34 of the Indian Penal Code, 1860, the applicants (1) Sandip s/o Sagar Yadav (2) Pankaj s/o Kailash Yadav, shall be released on anticipatory bail, on executing P.R. Bond of Rs. 25,000/- each with one solvent surety in the like amount.

- c] The applicants shall attend the concerned police station as and when required for the investigation purpose and shall cooperate with the investigating agency.
- d] The applicants shall not induce, threat or promise any witnesses who are acquainted with the facts of the present case.

The criminal application is disposed of.

[URMILA JOSHI-PHALKE, J.]