



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPLICATION (ABA) NO.396 OF 2024

(Shri Rupesh s/o Shalikram Dhurai Vs. 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. C. Dasgupta, Advocate for the applicant.
Mr. S.S. Hulke, APP for the State.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- JUNE 18, 2024.

Heard.

2. By this application, the applicant is seeking pre-arrest bail in connection with Crime No.206/2024 registered with Police Station Imamwada, Nagpur, District Nagpur for the offence punishable under Section 420 of the Indian Penal Code.

3. Learned Counsel for the applicant submitted that the accusation against the present applicant is on the basis of report lodged by Suraj Subhashrao Chopade on an allegation that the applicant has obtained the amount from him for purchasing the Bajaj Electric Scooter and LG Television and on his demand he has not paid the amount and thus he is duped by the present applicant. On the basis of said report, police have registered the crime against the present applicant.

4. Learned Counsel for the applicant submitted that as far as the allegations are concerned only allegation

is that the amount which is obtained by the present applicant as a hand loan is not returned back so civil dispute arose between the present applicant and by lodging this FIR, the complainant has given it color of a criminal offence. He submitted that in fact, the applicant has repaid the some of the amount and custodial interrogation of the present applicant is not required. He further submitted that the offence punishable under Section 420 of the IPC is punishable with imprisonment upto 7 years and there is no compliance by issuing the notice under Section 41A which is mandatory in view of the observation of the Hon'ble Apex Court. Considering the same, the applicant be released on anticipatory bail.

5. Learned APP strongly opposed the application on the ground that there was an intention since inception to cheat the complainant, and therefore, applicant has obtained the amount and has not repaid the same. The custodial interrogation of the applicant is required for the purpose of recovery of the said amount. Hence, the application deserves to be rejected.

6. I have heard learned Counsel for both the parties. Perused the recitals of the FIR as well as the investigation papers from which it reveals that by mediation of one Mr. Jain, the applicant has obtained the some amount from the complainant. As per the contention of the applicant, he has paid some amount but some amount is still due, and therefore, this FIR is lodged. As

far as the offence punishable under Section 420 of the IPC is concerned for which punishment upto 7 years is provided. In view of the guidelines issued by the Hon'ble Apex Court in *Satender Kumar Antil Vs. Central Bureau of Investigation and another*, [2022 LiveLaw (SC) 577] the investigating officer is under obligation to issue the notice under Section 41. Section 41 under Chapter V of the Code deals with the arrest of persons. The Hon'ble Apex Court observed 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 investigation, 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.

7. 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.

8. In the light of the above observation of the Hon'ble Apex Court and considering the facts of the case, it appears that the nature of the dispute is of a *prima facie* civil nature. As far as the custodial interrogation is concerned, there is no satisfaction by the Investigating Officer why the arrest of the applicant is required. Considering the same, the application deserves to be allowed by imposing certain conditions. Accordingly, I proceed to pass the following order :

(i) The application is allowed.

(ii) In the event of arrest, the applicant – Shri Rupesh s/o Shalikram Dhurai in connection with Crime No.206/2024 registered with Police Station Imamwada, Nagpur, District Nagpur for the offence punishable under Section 420 of the Indian Penal Code, be released on ad-interim anticipatory bail on executing a PR.Bond in the sum of Rs.25,000/- with one solvent surety, in the like amount.

(iii) The applicant shall attend the concerned police station once in a week i.e. on every Sunday between 10.00 a.m. and

1.00 p.m., till filing of the charge-sheet and shall cooperate with the investigating agency.

(iv) The applicant shall not directly or indirectly make any inducement and threat or promise to any person acquainted with the facts of the present case.

9. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)

**Divya*