



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

CRIMINAL APPLICATION (ABA) NO. 391/2023

Tukaram @ Bandubhau Kishanrao Tagde 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. S.A. Shugwani, counsel for the applicant.

Mr. Suraj Hulke, APP for the non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 05/02/2024.

1. Apprehending arrest at the hands of police in connection with Crime No. 131/2023 registered with Narkhed Police Station for the offence punishable under Sections 411, 413, 467, 468, 471, 120-B of the Indian Penal Code, 1860 and under Section 81(5B) of the Maharashtra Cooperative Societies Act, 1960.

2. Learned counsel for the applicant submitted that the accusation is on the basis of First Information Report lodged by the Auditor, on an allegation that there is a misappropriation of funds during the period of 01/04/2020 to 31/03/2022 of Rs. 71,94,980/- from the accounts of Mill i.e. Cotton Mill. During that period, Mill was given to the Textile Professionalist to run the Mill, and during the said period Limited Liability Partnership agreed to pay all the expenses towards salary of the employees, water bill, power bill etc. to run the Mill. The said factory was run by one Narayan Kapse and Mintu Sharma and they were looking after the affairs of the Mill. However, the present applicant is

implicated being he was the President of present Co-operative Mill. The allegation against the present applicant is without any substance, his custodial interrogation is not required. After the interim protection, he has cooperated with the investigating agency. Now investigation is practically completed and his custodial interrogation is not required.

3. Learned APP strongly opposed the present application on the ground that considering the allegation of misappropriation, the custodial interrogation is required and prays for rejection of the application.

4. Having heard learned counsel for the applicant and learned APP for the State. The allegations are made against all the office bearers of Mill, on the basis of the Auditor Report. Admittedly, the son of the appellant has brought to the notice about the misappropriation by alleging against the co-accused Mintu Sharma and one Narayan Kapse, general allegations are appears to be made against all the office bearers.

5. As observed by the Hon'ble Apex Court in the case of **Satender Kumar Antil V/s. Central Bureau of Investigation, reported in 2022 LiveLaw (SC) 577** wherein the Hon'ble Apex Court has considered necessity of the arrest and held that Section 41 under Chapter V of the Code deals with the arrest of persons. Even for a cognizable offense, an arrest is not mandatory as can be seen from the mandate of this provision. It is further held that if the officer is satisfied

that a person has committed a cognizable offense, 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 offense, and there is a necessity for an arrest. Such necessity is drawn to prevent the committing of any further offense, 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. One more ground on which an arrest may be necessary is when his/her presence is required after arrest for production before the Court and the same cannot be assured. It is further held that this provision mandates the police officer to record his reasons in writing while making an arrest. Any non-compliance, would entitled him the accused for grant of bail.

6. In view of that all directions issued by the Hon'ble Apex Court and considering the allegations, the arrest of the present applicant is not required, as the investigating officer has not put-forth any grounds for his arrest. After releasing him on ad-interim anticipatory bail, he appears to be cooperated with the investigating agency. In view of that,

the interim protection granted to the applicant deserves to be confirmed. Accordingly, I proceed to pass following order:

- a) The criminal application is **allowed**.
- b) In the event of arrest the applicant – **Tukaram @ Bandubhau Kishanrao Tagde**, is hereby released on ad-interim anticipatory bail in connection with Crime No.131/2023 registered with Police Station, Narkhed for the offences punishable under Sections 411, 413, 467, 468, 471, 120B of the Indian Penal Code and under Section 81(5B) of the Maharashtra Cooperative Societies Act, 1960, 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 as and when required for the investigation purpose.
- d) The applicant shall furnish his mobile phone number (s) along with his address with address proof.
- e) The applicant shall not induce the prosecution witnesses in any manner by pressurizing, promising or threatening who are connected with the alleged offence.

The criminal application is **disposed of**.

[URMILA JOSHI-PHALKE, J.]