



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

CRIMINAL APPLICATION (ABA) NO. 439 OF 2024

Dharamveer s/o Mahaveer Singh

V/s

Union of India, through Inspector, Railway Protection Force, Nagpur.

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. D.V. Chauhan, counsel with Mr. G.S. Gour, counsel for the applicant.
Mr. D.V. Navlani, counsel for the non-applicant/Union of India.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 02/08/2024.

1. Apprehending the arrest at the hands of police, as information is registered with the Railway Police Protection Force Nagpur vide Crime No. 08/2024 under Section 3(a) Railway Property (Unlawful Possession) Act, 1966, the applicant approached this Court for grant of pre-arrest bail.

2. Learned counsel for Mr. D.V. Chauhan for the applicant submitted that the applicant is the proprietor of M/s Shriji Designs, and working as a Railway Contractor since 1992. Since 1992, he is a registered contractor, and till lodging of the FIR, the applicant is having a clean record. Moreover, the applicant is having GST registration number. He used to purchase various articles from the open market. The allegation against the present applicant is that bundles of copper wire was provided to the applicant for completing the work of the Railway

Department. However, instead of returning the railway property, the copper wire is sold in the open market. Thereafter, the copper wire bundle amounting to Rs. 9,24,320/- was seized from the go-down of the applicant. He had also sold the copper wire bundle amounting to Rs. 17,92,600/-.

3. Learned counsel Mr. D.V. Chauhan for the applicant further submitted that, as far as the allegations are concerned, the reconciliation statement shows that after issuance of the completion certificate by the Railway, the applicant has started returning the material which was remained, and the returned invoices are filed on record. Thus, considering all these things, the custodial interrogation of the present applicant is not required, and in view of that, the interim protection granted to him deserves to be confirmed. He further submitted that the alleged offence is punishable upto two years, and there is no compliance in view of the decision of the Hon'ble Apex Court in the case of ***Satender Kumar Antil Versus Central Bureau Of Investigation & Anr. reported in 2022 LiveLaw (SC) 577.***

4. Learned counsel for the non-applicant, Mr. P.V. Navlani, appearing for the Union of India, raised a strong objection and invited my attention towards the impugned order passed by the District Judge, as well as the statement of the present applicant in his application stated that, the said material is left over of the earlier contract at

Narked Teegaon, which was completed by his father. Thus, the applicant becomes the main accused in the instant crime. He further submitted that the statement has been recorded, in which he has admitted that in the last five years he was granted three contracts of OHE (Over Head Equipment). It was further revealed during the investigation that, extra material came in his possession, and he has disposed it of.

5. After hearing learned counsel for the applicant and learned APP for the State, perused the recitals of the FIR as well as various documents filed on record. From the document, it shows that it is not disputed that the applicant was working as a Contractor for the Railway, he was the registered contractor. The completion certificate is also issued in his favour. The documents further shows that some of the articles has already been returned to the railway, and some was in his possession. As far as the custodial interrogation is concerned, some copper wire was seized from the Godown, and some was seized from the other co-accused, i.e., the son of the present applicant. Though the investigating officer has issued the notice under Section 41 to the present applicant but it has not complied with the ingredients of Section 41. In the case of ***Satender Kumar Antil (supra)***, wherein 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. 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.

6. 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. Similarly, the police officer shall record reasons when he/she chooses not to arrest. There is no requirement of the aforesaid police procedure when the offense alleged is more than seven years, among other reasons.

7. It is specifically observed by the Hon'ble Apex Court, that the consequence of non-compliance with

Section 41 shall certainly inure to the benefit of the person suspected of the offense. Resultantly, while considering the application for enlargement on bail, courts will have to satisfy themselves on the due compliance of this provision. Any non-compliance would entitle the accused to a grant of bail.

8. In the light of the above observation, here though notice under Section 41 is issued by the investigating officer to the present applicant, however it has not narrowed down the grounds for the arrest of the present applicant. Thus, there is no compliance of Section 41 of Cr.P.C.

9. Moreover, from the reply of the non-applicant, it reveals that applicant has attended the concerned police station and cooperated with the investigating agency, his statement is also recorded. In view of that, the interim protection granted to the present applicant deserves to be confirmed. Accordingly, I proceed to pass the following order:

- a] The criminal application is allowed.
- b] The interim protection granted to the present applicant by order dated 21/06/2024 is hereby confirmed on condition that the applicant shall attend the office of Railway Protection Police Force, Nagpur on Sunday between 10.00 a.m. to 01.00 p.m. till filing of

the charge-sheet and shall cooperate with the investigating agency.

- c] The applicant 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.]