



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

CRIMINAL APPLICATION (ABA) NO. 606 OF 2023

Subhash s/o Jagganath Ganvir 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. M.V. Rai, counsel for the applicant.

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

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 07/03/2024.

1. Apprehending arrest at the hands of Police in connection with Crime No.202/2023 registered with Police Station Beltarodi, Nagpur for the offence punishable under Sections 406 and 420 of the Indian Penal Code, 1860. The present applicant approached this Court for grant of pre-arrest bail.

2. That, one Sandya Pulyani lodged a report with P.S.O. Beltarodi, Nagpur alleging that, in the year 2011 her husband got acquaintance with the present applicant and friendship was developed between them. Due to the friendship, the applicant was visiting her house and introduced himself as Tahasildar serving at Ratnagiri and disclosed his name as Subhash Wankhede. Till 2019 she and her husband identified the applicant as Subhash Wankhede. In the year 2009, her son met with an accident and sustained head injury and undergone the operation, for which she has to incur the expenses of Rs. 16 Lakhs.

3. It is alleged that in the meantime, her husband also suffered from kidney problem and was on dialysis. By taking the benefit of the situation, the applicant had assured her to provide the wine shop license by depositing Rs.16 Lakhs. Therefore, she paid him Rs. 4 Lakhs in cash. Subsequently, her husband died, therefore, she could not comply with Rs. 16 Lakhs. The applicant was demanding the amount for renewal of the license. Again she has handed over Rs. 3 Lakhs by demand draft and the remaining Rs. 13 Lakhs was given by cash and thus total Rs. 16 Lakhs have been paid. However, she could not get any license, and she was duped by the present applicant. On the basis said report, the police have registered the crime against the present applicant.

4. The learned counsel for the applicant submitted that during the investigation, the investigating officer though recorded the statement of the witnesses, nothing transpired to show that what is the income source of the present informant to pay the said amount. Except her bare words that, he has no other document on record to show that she has paid Rs. 16 Lakhs. Moreover, the alleged offences are punishable imprisonment of less than seven years, and in view of the guidelines issued by the Hon'ble Apex Court, the custodial interrogation of the present applicant is not required, as no reasons or grounds are made out by the investigating officer for his arrest. In view of that, he be protected by granting anticipatory bail.

5. The learned APP strongly opposed the application and submitted that during the course of investigation, the statements are recorded. From which, it revealed that she has borrowed the amount from her friends and relatives, and has also obtained hand loan as well as sold the immovable property, which she was possessing. The custodial interrogation of the present applicant is very much necessary for the reasons, the offence is very serious. In view of that application deserves to be rejected. She further submitted that though the investigating officer has attempted to serve the notice under Section 41-A of the Cr.P.C. As the applicant is changing his address, the notice could not be served. In view of that, the application deserves to be rejected.

6. Having heard learned counsel for the applicant and learned APP for the State, perused the investigation papers as well as the recitals of the FIR. The allegation against the present applicant is that present applicant on the pretext of renewal of the license obtained the money from the present informant and duped her. The offence is registered under Sections 406 and 420 of the Indian Penal Code, for which the punishment of less than seven years is provided. By the order of this Court on 21/12/2023, the investigating officer was directed to issue notice under Section 41-A, however, said notice is not served. On perusal of the notice, it reveals that no grounds are assigned by the investigating officer for what purpose, the custody of the present applicant is required.

7. In *Satender Kumar Antil vs Central Bureau of Investigation*, [(2022) 10 SCC 51], the Hon'ble Apex Court dealt with the notice under Section 41-A 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.

8. 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 procedure when the offense alleged is more than seven years, among other reasons.

9. The consequence of non-compliance with Section 41 Cr.P.C. 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 due compliance of this provision. Any non-compliance would entitle the Accused to a grant of bail.

10. In the light of the above guidelines issued by the Hon'ble Apex Court on perusal of the notice, it reveals that no reasons are recorded by the investigating officer for what purpose the arrest of the present applicant is required. Admittedly, the notice is not served upon the present applicant. The present applicant has filed on record affidavit and documents which shows that due to the assault and threats by the informant, he has changed his address. He was also treated for the injuries sustained by him. In the above factual backgrounds, and considering no reasons are made out by the investigating officer for showing the requirement of the arrest of the present applicant. Therefore, 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 his arrest, in connection with Crime No. 202/2023 registered with Police

Station Beltarodi, Nagpur for the offence punishable under Sections 406 and 420 of the Indian Penal Code, 1860, the applicant-Subhash s/o Jagganath Ganvir, shall be released on anticipatory bail, on furnishing P.R. bond 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 i.e. Sunday between 10.00 a.m. to 01.00 p.m. and shall cooperate with the investigating agency.
- d] The applicant shall not induce, threat or promise any other witnesses who are connected with the alleged crime.
- e] The applicant shall not leave the jurisdiction of Beltarodi Police Station without prior permission of the Court.

The criminal application is **disposed of**.

[URMILA JOSHI-PHALKE, J.]