



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

CRIMINAL APPLICATION (ABA) NO.677 OF 2024
(Barkat Khan Hurmal Khan Vs. The 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

Ms Sapna Jadhav, Advocate for applicant.
Mr. N. Autkar, A.P.P for the State.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- NOVEMBER 21, 2024.

By this application, the applicant is seeking pre-arrest bail in connection with Crime No.402/2024 registered with Police Station Katol, District Nagpur for the offences punishable under Sections 381 of the Indian Penal Code.

2. The crime is registered on the basis of report lodged by Maulik Devrajbhai Monpara alleging that he is a Contractor by profession and at one of his site the contract work of electric pole fitting was in progress. The contract work of Ridhora site was sublet to Mohan Bhairu Singh for execution of electric fitting work and for the said purpose total amount of Rs.18,66,000/- was paid to him. When complainant visited the site, some material had been used; however, the rest of the material had been taken away by the co-accused Mohan Singh. It is alleged that during the investigation it revealed that the present applicant has purchased the same from the said Mohan Singh.

3. Learned Counsel for the applicant submitted that as far as the name of the present applicant in the FIR is concerned which is not mentioned. There is no allegation that either he has purchased the said material or not. She submitted that even the co-accused Mohan Singh is not yet arrested but the police are behind the present applicant to arrest him. She submitted that even accepting the allegation as it is, the alleged offence punishable under Section 411 of IPC for which the punishment is imprisonment upto 3 years. She further placed reliance on the decision of the Honourable Apex Court in the case of ***Satender Kumar Antil Vs. Central Bureau of Investigation, [(2022) 10 SCC 51]*** wherein the guidelines are issued by the Hon'ble Apex Court and held that the issuance of notice is mandatory on the part of the Investigating Officer. Learned trial Court has not considered this aspect and rejected the application. She submitted that there is no compliance by issuing the notice under Section 41 to the present applicant. For all above these reasons the applicant be released on bail in the event of his arrest.

4. Learned APP strongly opposed the said application and submitted that the observation of the District Judge itself shows that there are criminal antecedents against the present applicant. He further submitted that though applicant has attended the concerned police station but not cooperated with the investigating agency. He has not produced the vehicle

which was used in the commission of crime before the investigating agency. For all these reasons, his custodial interrogation is required. Hence, the application deserves to be rejected.

5. I have heard learned Counsel for both the parties. Perused the recitals of the FIR and the impugned order passed by the District Judge, Nagpur. As far as the present applicant is concerned and his involvement admittedly his name is not mentioned in the FIR. The recitals of the FIR nowhere shows that said material was sold by the co-accused. From the order passed by the District Judge wherein there is a reference of Section 411 and it is observed that during the investigation, the involvement of the present applicant is revealed. As the offence punishable under Section 411 for which punishment upto 3 years is provided. The guidelines issued by the Hon'ble Apex Court in the case of Satender Kumar Antil Vs. Central Bureau of Investigation (supra) is applicable in the present case. Admittedly, there is no compliance by issuing the notice wherein the Honourable Apex Court held that Section 41 of the Cr.P.C. and the said notice was issued after passing of the order of ad-interim protection. The contents of the notice also nowhere shows the satisfaction of the Investigating Officer for what purpose his custodial interrogation is required.

6. Considering the observation of the Honourable Apex Court, there is no compliance and

non-compliance itself would enure the applicant to release him on bail. However, the aspect of the custodial interrogation which is mentioned by the learned APP can be taken care of by imposing certain conditions on the present applicant. Accordingly, I proceed to pass the following order :

- (i) The application is allowed.
- (ii) In the event of the arrest, the applicant - Barkat Khan Hural Khan in connection with Crime No.402/2024 registered with Police Station Katol, District Nagpur for the offences punishable under Sections 381 and 411 of the Indian Penal Code, be released on anticipatory bail on executing P.R. bond in the sum of Rs.25,000/- with one 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 AM and 1.00 PM, till filing of the charge-sheet and shall cooperate with the investigating agency.
- (iv) The applicant shall produce the vehicle before the Investigating Officer on or before 05/12/2024.

(v) The applicant shall not induce, threat or promise any witnesses in any manner who are acquainted with the facts of the case either personally or by way of electronic media.

7. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)

**Divya*