



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

CRIMINAL APPLICATION (ABA) NO. 692 OF 2024

Divakar s/o Prabhakar Nikure 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. R.M. Daga, counsel for the applicant.

Mr. Nitin Autkar, APP for non-applicant/State.

Mr. S.Y. Deopujari, counsel for Assist to Prosecution.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 23/10/2024.

1. Apprehending the arrest at the hands of police in connection with Crime No.409/2024 registered with Police Station, Bramhapuri, District Chandrapur for the offences punishable under Sections 420 and 406 of the Indian Penal Code, the applicant approached this Court for grant of pre-arrest bail.

2. Learned counsel Mr. Daga for the applicant submitted that from the recitals of the FIR it reveals that there was a hand loan transaction between the informant and the present applicant, and thereafter, the present applicant agreed to sell the property in favour of him, which was not sold out, and therefore, this crime is registered. He submitted that the FIR is lodged after two and half years, and the said delay is not explained by the informant. He submitted that even assuming the allegations as it is, no offence is made out against the present applicant. The transaction between the present applicant and the informant is of civil nature.

Moreover, the alleged offences are punishable with imprisonment of seven years, and there is no compliance by issuing notice under Section 41 of the Code of Criminal Procedure. He submitted that applicant is served with notice dated 11/10/2024, wherein the grounds are not made out to show as to why the arrest of the applicant is required.

3. He also placed on record the order passed by the Division Bench of this court, wherein the applicant has prayed for quashment of the FIR i.e., present crime No. 409/2024, and the Division Bench has directed the investigating agency not to file the charge-sheet against the applicant without obtaining the leave of this Court. He further submitted that in the light of the above submissions and the guidelines issued by the Hon'ble Apex court in the case of *Satender Kumar Antil Versus Central Bureau Of Investigation & Anr. [2022 LiveLaw (SC) 577]*, the application deserves to be allowed.

4. Learned APP strongly opposed the said application on the ground that there are criminal antecedents against the present applicant. Earlier also two crimes were registered against him and the same are under investigation. The same modus operandi, the applicant has duped the other persons also. In view of that, the application deserves to be rejected.

5. Learned counsel for the complainant-Assist to prosecution Mr. S.Y. Deopujari also reiterated the same contentions and submitted that previous offences registered

in the years 2013 and 2017 show that with similar modus operandi, the applicant has cheated the other persons also. He further submitted that two offences are under investigation. He further submitted that after going through the 7/12 extract, the non-applicant came to know about selling of property to the third person and thereafter, he approached the police station.

6. In support of his contention, he placed reliance on the decision of Hon'ble Apex Court in the case of ***Sumitha Pradeep Vs C.K. Arun Kumar and another [2022 DGLS (SC) 1415]***, wherein the Hon'ble Apex Court considered the aspect of the custodial interrogation and observed that in many anticipatory bail matters, we have noticed one common argument being canvassed that no custodial interrogation is required and, therefore, anticipatory bail may be granted. There appears to be a serious misconception of law that if no case for custodial interrogation is made out by the prosecution, then that alone would be a good ground to grant anticipatory bail. Custodial interrogation can be one of the relevant aspects to be considered along with other grounds while deciding an application seeking anticipatory bail. There may be many cases in which the custodial interrogation of the accused may not be required, but that does not mean that the prima facie case against the accused should be ignored or overlooked and he should be granted anticipatory bail. In the light of the above submission, he prays for rejection of the application.

7. After hearing the learned counsel for the applicant and learned APP for the State as well as counsel for complainant, perused the recitals of the FIR. From the recitals of the FIR, it reveals that the informant entered into an agreement with the present applicant to purchase the plot situated at Mouza Bramhapuri, District Chandapur, and accordingly, the consideration amount was paid. It was decided that the applicant shall execute the sale-deed in his favour. The report is lodged by the informant after two and half years after he entered into the agreement with the present applicant. During the investigation, the investigation officer has collected the various documents as well as the statements of the witnesses. One application of the present applicant was also produced on record along with the investigation papers.

8. The said application is also collected by the investigating agency. During the course of investigation it reveals that similar allegations are made by the informant against the present applicant. There is no dispute as to the fact that the previous crimes are also registered with the similar allegations against the present applicant, and as per the oral intimation given by the learned APP as well as learned counsel for the complainant, those two crimes are already under the inquiry.

9. Considering the allegation in the present case, which reveals that there was a hand loan transaction between the present applicant and the informant, and subsequently

the informant and the applicant entered into an agreement to purchase the property, and the informant also paid the consideration amount. As far as the involvement of the present applicant in previous offences is concerned, which reveals from the investigation papers, two crimes are already registered against him in the years 2013 and 2017.

10. Learned counsel for the complainant also pointed out that 19 civil suits are filed against the present applicant, as similar types of transactions are entered into by the present applicant.

11. Considering the entire submissions made by learned counsel for the applicant and learned counsel for the complainant as well as learned APP, it reveals that it is not the single transaction entered into by the present applicant, but in several transactions, the applicant has obtained the amount and not executed the sale-deed in favour of the persons with whom he entered into the crime. Admittedly, there are directions of the Hon'ble Apex Court in the case of ***Satender Kumar Antil*** referred (supra), wherein it is held that 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.

12. The Hon'ble apex Court further observed that it 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.

13. The consequence of non-compliance with Section 41 of the 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 the due compliance of this provision. Any non-compliance would entitle the accused to a grant of bail.

14. Here in the present case also, the investigating officer has issued a notice to the present applicant, but on perusal of the notice, it reveals that the investigating officer has not laid down any grounds to arrest the present applicant which is required as per law. As observed by the Hon'ble Apex Court, if the police officer has not recorded the reasons or recorded the reasons when he/she chooses not to arrest, as well as when he/she chooses to arrest and not follow the

procedure, with certainly inure to the benefit of the person suspected of the offense.

15. Mere criminal antecedents are not sufficient to curtail the liberty of the present applicant, the courts have to consider the facts of the present case. Considering the order passed by the Division Bench as well as considering the recitals of the FIR, which prima-facie appears that there was an agreement to sell the property and the said agreement has been entered into between the present applicant and the complainant. Apparently, it is a dispute of a civil nature, however, the investigation is to be carried out. In view of that, 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 arrest the applicant -Divakar s/o Prabhakar Nikure shall be released on anticipatory bail, in connection with Crime No.409/2024 registered with Police Station, Bramhapuri, District Chandrapur for the offence punishable under Sections 420 and 406 of the Indian Penal Code, 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 twice in a week on Monday and Thursday between 10.00 a.m. to 01.00 p.m.

and shall cooperate with the investigation agency.

- d] The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the case and shall cooperate with the investigating agency.

The criminal application is **disposed of**.

[URMILA JOSHI-PHALKE, J.]