



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

CRIMINAL APPLICATION (ABA) NO.710 OF 2024

Sarfaraz Shah Anwar Shah

Vs.

State of Maharashtra, Through Police Station Officer, Police Station,
Shegaon Gramin, District Buldhana

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. M. N. Ali, Counsel for the applicant.

Mr. H. D. Dubey, APP for non-applicant /State.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 18 /10/2024

1. Apprehending the arrest at the hands of police in connection with Crime No.327/2021 registered with Police Station, Shegaon (Gramin), District Buldhana for the offences punishable under Sections 420, 170, 171, 323 read with Section 34 of the Indian Penal Code, the applicant approached this Court for grant of pre-arrest bail.

2. As per the allegations on the basis of the report lodged by Santoshsingh Mannusingh Thakur on an allegation that on 16.12.2021 at about 5.30 p.m. when he was proceeding along with his friends from Shegaon to Vasmat, at that time, there was a telephonic talk between him and the present applicant and present applicant promised him to provide Swarn Bhasma for Rs.6,00,000/- and thereafter, on the way, said applicant asked to stop

the vehicle. At the relevant time, 4 – 5 persons personated themselves as Police Officers assaulted him and thereafter, the present applicant went along with those persons. Thus, he is cheated by obtaining Rs.6,00,000/-. On the basis of the said report, police have registered the crime against the present applicant.

3. Learned Counsel Mr. Mir Nagman Ali for the applicant submitted that as far as the allegation regarding the amount is concerned, the applicant has already deposited the amount of Rs.6,00,000/-. He further submitted that the allegation of the impersonation of the public servant is against the other co-accused who are already released on bail. As far as the present applicant is concerned, his custodial interrogation is not required as the amount is already deposited by him. The investigation is already completed and the charge-sheet is filed. Incarceration of the present applicant is not required. In view of that, he be protected by granting anticipatory bail.

4. Learned APP strongly opposed the said application and submitted that the applicant has promised for providing the Swarn Bhasma and obtained the money. His custodial interrogation is required for the interrogation purpose. In view of that the application deserves to be rejected.

5. After hearing the learned Counsel for the applicant and learned APP for the State, perused the investigation papers. The alleged offences punishable under Sections 420, 170, 171 and 323 are punishable with less than seven years. As far as the compliance under Section 41 of Cr.P.C. is concerned, which is not complied with by the Investigating Officer. There are no grounds raised by the investigating agency why the custodial interrogation of the present applicant is required. In view of the observation of the Hon'ble Apex Court in the case of **Satender Kumar Antil Vs. Central Bureau of Investigation and Anr.** reported in **2022 LiveLaw (SC) 577**, when the offences are punishable less than seven years arrest is not mandatory, but the Investigation Officer has to lay down the grounds for which the custodial interrogation is required. If the Investigation Officer fails to comply with this, the applicant is entitled to be released on bail. Considering the fact that, now the applicant has already deposited the amount, his custodial interrogation is not required. In view of that, he can be protected by granting anticipatory bail. Accordingly, I proceed to pass following order:

ORDER

(i) The application is allowed.

(ii) In the event of arrest, the applicant **Sarfaraz Shah Anwar Shah** shall be released on anticipatory bail in connection with Crime No.327/2021 registered with Police Station

Shegaon (Gramin), District Buldhana for the offences punishable under Sections 420, 170, 171, 323 read with Section 34 of the Indian Penal Code, on executing PR Bond of Rs.25,000/- with one solvent surety in the like amount.

(iii) The applicant shall attend the concerned Police Station once in a week on Monday between 10.00 a.m. to 1.00 p.m. and shall cooperate with the investigating agency.

(iv) The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the case.

(v) The applicant shall not encash the cheque which was obtained from the informant drawn on the Axis Bank, Shegaon Branch.

(vi) The applicant shall not indulge in similar type of the offence.

(vii) The contravention of any of the conditions would lead to the cancellation of bail.

(URMILA JOSHI-PHALKE, J.)