



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

CRIMINAL APPLICATION (ABA) NO.689 OF 2023
(Akash s/o Subhash Rathi Vs. State of Maharashtra and anr.)

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

Court's or Judge's Order

Mr. A.M. Chandekar, Advocate for the applicant.
Mr. V.A. Thakare, APP for the State.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- JANUARY 05, 2024.

Heard.

2. By this application, the applicant is seeking anticipatory bail in connection with Crime No.1046/2022 registered with police station Arni, Taluka Arni, District Yavatmal for offence punishable under Sections 403, 406, 419, 420, 465, 468, 471, 504 and 506 of the Indian Penal Code.

3. The applicant is apprehending arrest at the hands of police as crime is registered on the basis of direction issued by the Judicial Magistrate First Class, Arni, District Yavatmal. As the application was filed by the complainant namely Omkar Mahadeo Gunthewar on an allegation that he is Agriculturist and in the month of November, 2020 present applicant along with his father approached to him and asked him to invest the amount in Stock Invest Group of SBI. After repeated demand of the accused he has invested the amount by issuing the

cheques. Though the present applicant and his father assured him that he will receive the handsome returns in his bank account but he has not received any returns in respect of the said investment. It further revealed to him that there is no company under the name and style as Stock Invest Group of SBI and no such scheme is run by the State Bank of India. Therefore, he approached to the present applicant however, he came to know that his father who came along with the present applicant is no more and died during the Covid period. Therefore, informant has demanded the amount from the present applicant but he has not received any amount. Prior to the death of the father, father of the present applicant issued the cheques which are also not honoured. Thus, the present applicant in furtherance of common intention with his father duped him. On the basis of said report, police have registered the crime against the present applicant.

4. It is submitted by the learned Counsel for the applicant that as far as the allegation against the present applicant is concerned is only to the extent that he accompanied his father at the time of making promises about security of investment to investors. There is no other allegations, and therefore, no role is played by the present applicant in the alleged offence. There was no intention since inception to dupe the informant. Physical custody of the present applicant is not required. In view of that he be protected by granting anticipatory bail.

5. Said application is strongly opposed by the State on the ground that during investigation, the Investigating agency has not found any registration in respect of company Stock Invest Group of SBI, Yavatmal. Moreover, the amount came to be transferred in the account of Subhash Rathi which is his personal savings bank account. It is further submitted by the learned Additional Public Prosecutor that some interest amount is paid to the informant from the account of the present applicant even prior to the death of the father. The recitals of the FIR and the statement of the informant shows that present applicant was also a key person who induced him to invest the amount and the intention since inception is revealed from the conduct of the applicant as well as his father who induced to invest the amount. Though said company is not in existence. Considering the nature of the offence, the custodial interrogation of the present applicant is required. In view of that, the application deserves to be rejected.

6. Having heard both the sides and perused the order passed by the Magistrate while directing the police to register the FIR. Perused the recitals of the FIR and also perused the investigation papers. From the investigation papers and the recitals of the FIR, it revealed that the present applicant and his father approached to the complainant and induced for the investment. There are other complaints filed against the present applicant and the deceased/accused who is the father of the present

applicant. From the recitals of the present FIR as well as the FIR lodged by the other informant shows that though present applicant and his father were not concerned with any stock investment group which according to them was run by the State Bank of India. They have induced the various persons to invest the amount. All the investors are the poor agriculturist. They have invested the amount which is their hard earned money. The intention of the present applicant and his father reveals from the documents collected by the Investigating Agency which shows that the Yavatmal Stock Investment Group is not in existence. The cheques issued by the father of the present applicant sufficiently shows the involvement. Some interest amount is also paid from the account of the present applicant during the lifetime of his father. Thus, there is the *prima facie* case against the present applicant to show his involvement in the alleged offence. The offence is alleged against the present applicant admittedly in the nature of the economic offence. The Hon'ble Apex Court in ***Satender Kumar Antil Vs. Central Bureau of Investigation, [(2022) 10 SCC 51]*** held that though the offence is cognizable one, each and every offence the arrest is not necessary. The Hon'ble Apex Court has also considered the economic offence and issued some guidelines. In view of the said guidelines, the Investigating Officer has to satisfy himself whether the arrest of the accused is necessary. If the provisions of Section 41 of Cr.P.C. are taken into consideration which authorises the

police officer to arrest an accused without an order from a Magistrate and without a warrant. The Hon'ble Apex Court issued some guidelines. In view of the said guidelines it is directed that the police officer shall forward the check list duly filled and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention. It is further observed by the Hon'ble Apex Court that before a Magistrate authorises detention under Section 167 Cr.P.C., he has to be first satisfy that the arrest made is legal and in accordance with law and all the constitutional rights of the person arrested are satisfied. Thus, Section 41 under Chapter V of the Code deals with the arrest of persons. In view of the observation of the Hon'ble Apex Court even for a cognizable offence, 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 offence, 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 offence, and there is a necessity for an arrest. Such necessity is drawn to prevent the committing of any further offence, 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. 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. The consequence of non-compliance with Section 41 shall certainly inure to the benefit of the person suspected of the offence. A non-compliance would entitle the accused to a grant of bail.

7. In the above reasons, admittedly, there is a *prima facie* case made out against the present applicant and considering the allegations, I am not inclined to use discretion by granting the anticipatory bail to the present applicant.

8. The Investigating officer shall observe the guidelines issued by the Hon'ble Apex Court in Satender Kumar Antil (supra) before taking further course of action.

9. Hence, the application deserves to be rejected and the same is rejected accordingly.

(URMILA JOSHI-PHALKE, J.)