



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

CRIMINAL APPLICATION (ABA) NO.761 OF 2023

(Kapil Prakash Jadhav and another Vs. The State of Maharashtra thr. PSO PS
Khamgaon City, Dist. Buldhana)

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

Court's or Judge's orders.

Mr. S. V. Sirpurkar, Advocate for Applicants.
Ms. H. N. Prabhu, APP for Respondent/State.
Mr. Mir Nagman Ali, Advocate for assist to prosecution.

CORAM: URMILA JOSHI PHALKE, J.

DATE: 2nd APRIL, 2024.

Heard.

2. Apprehending the arrest at the hands of police in connection with Crime No.491/2023 registered with Police Station Khamgaon, Tahsil Khamgaon, District Buldhana for the offence punishable under Sections 406 and 506 read with Section 34 of the Indian Penal Code, the applicant preferred this application.

3. The applicant is apprehending arrest at the hands of police as accusation is against him on the basis of report lodged by Shafiulla Khan Hafijulla Khan alleging that on 15.11.2022 the complainant had sold 18 buffaloes for consideration of Rs.16,83,800/- at A.P.M.C. Market, Khamgaon wherein the applicant had paid Rs.1,00,000/- and agreed to pay remaining amount i.e. Rs.15,83,800/-

within 15 days. In the said transaction Irfanuddin and Sheikh Anis were brokers. The informant has demanded the amount. Therefore, issued cheque of Rs.1,00,000/- on 10.12.2022 and agreed to pay remaining amount, but failed to pay the same and therefore, the informant approached to the police station and lodged the report.

4. Mr. Sirpurkar, the learned counsel for the applicants submitted that the alleged offences are not punishable with imprisonment more than seven years. In view of the judgment of the Hon'ble Apex Court in the case of *Satender Kumar Antil v. Central Bureau of Investigation and another* reported in *(2022) 10 SCC 51* wherein it is held that even for a cognizable offence, an arrest is not mandatory as can be seen from the mandate of Section 41 of Cr.P.C. 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, and 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 to committing of any further offence, for a proper investigation, and to prevent him/her from either disappearing or tampering with the evidence. The Hon'ble Apex Court further laid down the guidelines and observed that Section 41 of Cr.P.C. mandates the police officer to record his reasons in writing while making the arrest.

5. In view of the above decision the learned counsel submitted that the custodial interrogation of the present applicant is not required and therefore, he be protected by granting anticipatory bail.

6. The learned APP strongly opposed the application on the ground that after issuance of the notice under Section 41 of Cr.P.C. the applicant has not co-operated with the Investigating Agency and has not attended the police station. He is absconding and therefore, the application deserves to be rejected.

7. Having heard the learned counsel for the applicant and the learned APP for the State, perused the investigation papers. By order dated 29.11.2023 and subsequently that the Investigating Officer was directed to issue the notice under Section 41 of the Cr.P.C. in view of the judgment of the Hon'ble Apex Court in the case of ***Satender Kumar Antil*** referred to supra. The Investigating Officer has issued the notice but the applicant was not available at his house and therefore, the notices were affixed at the door of his house. After affixing the notice also the applicant has not turned up and not co-operated with the Investigating Agency. The reasons mentioned by the Investigating Officer for the arrest is that the amount is to be recovered. Thus, the Investigating Officer has made out a case for custodial interrogation of the present applicant. Considering the fact that the applicant is not co-operating with the Investigating

Agency and not complying with notice issued under Section 41 of Cr.P.C. the discretion by way of granting anticipatory bail cannot be used in favour of the present applicant. In view of that, the application is rejected. Accordingly, I proceed to pass following order:

- i] The application is rejected.

JUDGE