



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

CRIMINAL APPLICATION (ABA) NO.815 OF 2024

Sagar s/o Chandumal Rohida @ Rohda

Vs.

State of Maharashtra, Through Police Station Officer, Police Station,
Nandgaonpeth, District Amravati

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

Court's or Judge's orders

Mr. H. A. Biherani, Counsel for the applicant through video conferencing.
Mr. N. B. Jawade, APP for non-applicant /State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 19/12/2024

1. Apprehending the arrest at the hands of police in connection with Crime No.165/2024 registered with Police Station, Nandgaon Peth, District Amravati for the offence punishable under Section 406 of the Indian Penal Code, the applicant approached this Court for grant of pre-arrest bail.

2. Heard learned Counsel for the applicant who appeared through video conferencing. He submitted that the crime is registered on the basis of report lodged by Sanjay Sevakram Katariya alleging that he is dealing with the wholesale clothes business. The present applicant was a recovery agent appointed by the informant and the present applicant has recovered the amount and not paid to the informant and misappropriated the same. He

submitted that as far as the offence 406 of the Indian Penal Code is concerned, for which the punishment up to seven years is provided and there is no compliance by issuing the notice under Section 35(3) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS). He further submitted that considering the allegation, the nature of the dispute is of civil nature and no criminal offence is attracted. In view of that, the applicant be protected by granting anticipatory bail.

3. Learned APP strongly opposed the said application and submitted that there was an intention of the present applicant to dupe the informant and he has not cooperated with the investigating agency. The General Diary entry is placed on record to show that he is not cooperating with the investigating agency.

4. After hearing both sides and on perusal of the recitals of the FIR, it reveals that the alleged offence is punishable up to seven years. In view of the Judgment 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**, the investigating Officer is under obligation to issue the notice under Section 35(3) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (under Section 41 of the Code of Criminal Procedure). In absence of the said compliance, the applicant is

entitled to be released on bail. Moreover, considering the allegation it appears that the dispute appears to be of a civil nature, however, considering the contention raised by the learned APP, some condition requires to be imposed on the present applicant. In view of that, I proceed to pass following order:

ORDER

- (i) The application is allowed.
- (ii) In the event of arrest, the applicant **Sagar s/o Chandumal Rohida @ Rohda** shall be released on anticipatory bail, in connection with Crime No.165/2024 registered with Police Station, Nandgaon Peth, District Amravati for the offence punishable under Section 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.
- (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 single non-attendance of the applicant and non-cooperation to the Investigating Officer would lead to the cancellation of bail.
- (iv) The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the case.

The application is disposed of.

(URMILA JOSHI-PHALKE, J.)