



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

CRIMINAL APPLICATION (ABA) NO. 780/2023

Pankaj s/o Sitaram Ghorpade V/s 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. S.V.Sirpurkar, counsel for the applicant.

Mrs. T.H. Udeshi, APP for the non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 20/02/2024.

1. Apprehending arrest at the hands of Police in connection with Crime No. 578/2023 registered with Shegaon City, Tq. Khamgaon District Buldhana for the offence punishable under Section 420 read with Section 34 of the Indian Penal Code, 1860. The applicant has approached this Court for grant of pre-arrest bail.

2. Mr. S.V.Sirpurkar, learned counsel for the applicant submitted that as the crime is registered on the basis of report lodged by Sheikh Aziz Sheikh Shabib, on an allegation that the present applicant with whom he was acquainted to one Nasir Kha Dulleh Kha, who always informs him that the plots are available with him and he is working as a commission agent in the transaction of selling and purchasing of the plots. On 20/05/2023, he has shown some plots to the informant. At the relevant time, present applicant was also present there. The plots were shown by the said Nasir Kha Dulleh Kha disclosing that these plots are owned by the present applicant and one Laxman Warade. Therefore, the informant has chosen two

plots, and the consideration amount was fixed as Rs. 521/- per sq. ft. Accordingly, the informant has paid the amount to the said Nasir Kha Dulleh Kha as well as the earnest amount of Rs. 2,30,000/- was paid Laxman Warade and present applicant have accepted the said amount. Subsequently, the said plots were not sold out to the informant and therefore, the informant approached to the Police Station and lodged the report.

3. Learned counsel for the applicant further submitted that the offence alleged for which the punishment less than seven years is provided. As far as the allegations are concerned, nothing is to be recovered from the present applicant. The investigation was carried out and the applicant has attended the Police Station after he was released on ad-interim anticipatory bail. He further submitted that there is no compliance by the investigating officer under Section 41-A of the Cr.P.C. in view of the judgment of the Hon'ble Supreme Court and prays for anticipatory bail.

4. Learned APP strongly opposed the application on the ground that the applicant has given false information to the investigating officer that he has already paid the amount to the complainant. In fact, the statement of the complainant reveals that no amount is received by him. She further submitted that considering the allegation against the present applicant, there is other offence registered against him. In view of that, custodial interrogation of the present applicant is

required, and prayer for grant of anticipatory bail deserves to be rejected.

5. After hearing learned counsel for the applicant and learned APP for the State, perused the recitals of the FIR as well as investigation papers. As far as the accusation against the present applicant is concerned, it shows that the present applicant along with other co-accused have obtained the money towards the earnest amount and agreed to sell the plots to the informant but not sold the plots and duped the informant. As far as the contention of the learned counsel for the applicant is concerned, that there is no compliance in view of Section 41-A of Cr.P.C., the judgment of the Hon'ble Apex Court in the case of ***Satender Kumar Anil V/s Central Bureau of Investigation, reported in 2022(10) SCC 51*** wherein it is held that 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. One more ground on which

an arrest may be necessary is when his/her presence is required after arrest for production before the Court and the same cannot be assured.

6. Section 41 of the Cr.P.C. mandates the police to record his grievance in writing while making the arrest. The Police Officer is duty bound to record the reasons. Similarly, the Police Officer shall record the reasons when he/she chooses not to arrest. The consequence of non-compliance with Section 41 of Cr.P.C. shall certainly inure to the benefit of the person suspected of the offence. It is further held by the Hon'ble Apex Court that any non-compliance would entitle the accused to a grant the bail. At this stage, it appears that there is no compliance of Section 41-A which is mandatory, in view of the judgment of the Hon'ble Apex Court. The investigating officer has not complied with the same, in view of that interim protection granted to the present applicant deserves to be confirmed. Hence, I proceed to pass the following order:

- a) The criminal application is **allowed**.
- b) In connection with Crime 578/23 registered under Section 420 read with Section 34 of the Indian Penal Code, 1860, the applicant – **Pankaj Sitaram Ghorpade**, shall be released on anticipatory bail on executing P.R. Bond in the sum of Rs. 25,000/- with one solvent surety in the like.
- c) The applicant shall attend the concerned Police Station as and when required for the investigation

purpose and shall cooperate with the investigating agency.

- d) The investigating officer shall issue a letter in advance to the applicant for seeking his attendance for investigation purpose.
- e) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case.
- f) The contravention of any of the conditions leads to cancellation of the bail.

The criminal application is disposed of.

[URMILA JOSHI-PHALKE, J.]