



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

CRIMINAL APPLICATION (ABA) NO.819 OF 2023

Saniya Kousar Sheikh Parvej

Vs.

State of Maharashtra, Through Police Station Officer, Police Station, Ballarpur,
District Chandrapur

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

Court's or Judge's orders

Mr. A. C. Jaltare, Advocate for applicant.

Mrs. M. H. Deshmukh, APP for respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 30/01/2024

1. By this application, the applicant is seeking pre-arrest bail in connection with Crime No.1243/2023 registered with Police Station, Ballarpur, District Chandrapur for the offence punishable under Section 420 read with Section 34 of the Indian Penal Code.

2. The accusation against the present applicant is on the basis of report lodged by Neha Farin Yusuf Khan, alleging that she is resident of Ballarpur with her father and brother. She was running the 'BHISI' and was keeping its account. In the year 2017, when she was looking for marriage proposal, the applicant stated to her that she knew one boy named Mohd. Afan Raza Kadari i.e. the co-accused and also informed that he is completing his engineering in Hyderabad and shown his photographs. Thereafter, the informant and the accused

No.2 exchange their mobile numbers, after which the complainant agreed for the marriage proposal.

3. It is further alleged that accused No.2, who was proceeding to Bhilai and was in assistance of financial aid. The applicant demanded some amount from the complainant, and on the presumption that as she is marrying with the accused No.2 she gave a money. Till today, she has paid total amount of Rs.54,22,000/- to the applicant out of which, the complainant has paid an amount of Rs.14,40,000/- by online transfer and amount of Rs.39,82,000/- by way of cash.

4. It is further alleged that, as far as the marriage proposal is concerned, which is not worked out and the amount has also not repaid to the complainant and therefore, she approached to the Police Station.

5. The learned counsel Mr. A.C. Jaltare for the applicant submitted that as far as the allegations are concerned, it is not the applicant, who has received the amount. The amount is received by the co-accused. In view of the direction of this Court, the applicant has attended the Police Station and cooperated with the investigating agency. The only role attributed to the present applicant is that she has introduced the co-accused with the complainant and handed over some amount to her by way of cash and by way of transfer.

After granting the ad-interim protection to the present applicant, she has attended the Police Station and also furnished the necessary information.

6. The offence registered against the present applicant is under Section 420 of the Indian Penal Code for which punishment up to seven years is provided. In view of the guidelines issued by the Hon'ble Apex Court in the case of **Satender Kumar Antil V/s Central Bureau of Investigation and Ors.** 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 the Cr.P.C. If the officer is satisfied that a person has committed a cognizable offence, punishable with imprisonment for a term, which may less than seven years, or which may extend to the said period, with or without fine, an arrest could only follow when he 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 in committing of any further offence, or proper investigation and to prevent him / her from either disappearing or tampering with the evidence.

7. It is further held that Section 41 Cr.P.C. mandate the police officer to record his reason while making an arrest. The consequence of non-compliance

with Section 41 shall certainly inure to the benefit of the person suspected of the offence.

8. In the light of above guidelines issued by the Hon'ble Apex Court and as offence allegedly committed is punishable with imprisonment up to seven years, the investigating officer is under obligation to record the reasons for the arrest in writing by issuing the notice under Section 41 of Cr.P.C. The said directions are not followed by the Investigation Officer and no such report is filed before this Court.

9. In view of the observation, as the offence is punishable less than seven years and the applicant has already attended the Police Station, her custodial interrogation is not required. In view of that, the ad-interim protection granted to the present applicant deserves to be confirmed. Accordingly, I proceed to pass following order.

ORDER

(i) The application is allowed.

(ii) In the event of her arrest, in connection with Crime No.1243/2023 registered with Police Station Ballarpur, District Chandrapur for the offence punishable under Section 420 read with Section 34 of the Indian Penal Code, 1860, the applicant – **Saniya Kousar Sheikh Parvej**, be released on anticipatory bail on furnishing P.R. bond in the sum of Rs.25,000/- with one surety in the like amount.

(iii) The applicant shall attend the concerned Police Station once in a week between 10.00 a.m. to 01.00 p.m. and shall cooperate with the investigating agency.

(iv) The applicant shall furnish her cell phone number and address with address proof, before the Investigating Officer.

(v) The applicant shall not induce, threat or promise to any witnesses who are acquainted with the fact of the present case.

(URMILA JOSHI-PHALKE, J.)