



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

CRIMINAL APPLICATION (ABA) NO. 112/2024

Santosh Ramsing Rathod 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. A.K. Bhangde, counsel for the applicant.

Ms. Trupti Udeshi, APP for the non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 12/02/2024.

1. Apprehending arrest at the hands of Police in connection with crime No. 21/2024 registered with Police Station Karanja (Gramin) District Washim for the offences punishable under Sections 420 and 506 of the Indian Penal Code, 1860. The applicant has approached this court for seeking pre-arrest bail.

2. The accusation against the present applicant is on the basis of report lodged by Kishor Nandusing Rathod, on an allegation that the informant is an agriculturist and he decided his land for irrigation with full source of water. He applied for *Rojgar Hami Scheme* for digging the well in that field, as he was not aware of the process therefore, he approached to the applicant. The applicant obtained the essential documents for submitting the Online Form and demanded some amount from him to pay, and accordingly, obtained the amount and duped the informant. On the basis of said report, the police have registered the crime against the present applicant.

3. Learned counsel for the applicant submitted that as far as the allegations are concerned, with false allegation, this report is lodged. The immediate custodial interrogation of the present applicant is not required. He also placed reliance on some declarations which are submitted by the Agriculturist. He submitted that, the offence punishable under Section 420 of the IPC is not punishable more than seven years. In view of that, there should be a compliance under Section 41-A of Cr.PC and therefore, the applicant be protected by granting ad-interim protection.

4. Learned APP strongly opposed the application and submitted that, from the declaration itself, the fishiness is apparent, the custodial interrogation of the present applicant is required and therefore, prayer for grant of anticipatory bail deserves to be rejected.

5. After hearing learned counsel for the applicant and after perusal of the First Information Report, it reveals that the allegation against the present applicant is that, for submitting the Online Form for digging the well, the present applicant has obtained amount of Rs. 33,000/- from the informant, and Rs. 30,501/- from one Baban Saklal Rathod. Considering the allegations as it is, immediate custodial interrogation of the present applicant is not required. Moreover, 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, reported in 2022 LiveLaw (SC) 577*** wherein the Hon'ble Apex Court issued the guidelines, as far as the offence punishable

under the penal provisions, for which the punishment less than seven years is provided. It is observed by the Hon'ble Apex Court that Section 41 under Chapter V of the Code deals with the arrest of the persons. Even for a cognizable offense, 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 offense, 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 the said person has committed an offense, and there is a necessity for an arrest. 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 to Section 41 of the Cr.P.C. shall certainly inure to the benefit of the person suspected of the offence.

6. Admittedly, in the present case, the notice under Section 41-A of the Cr.P.C. is not issued to the present applicant. In view of that the investigating officer first shall record the reasons for the arrest, in between the applicant can be protected by granting ad-interim protection. Accordingly, I proceed to pass the following order:

- a) Issue notice, returnable after **two weeks**.
- b) Ms. Trupti Udeshi, learned APP waives service of notice on behalf of non-applicant/State.

- c) In the event of his arrest, in connection with Crime No.21/2024 registered with Police Station Karanja (Gramin), District Washim, for the offences punishable under Sections 420 and 506 of the Indian Penal Code, 1860, the applicant is released on ad-interim anticipatory bail on executing P.R. bond in the sum of Rs.25,000/- with one sureties in the like amount.
- d) The applicant shall attend the concerned Police Station once in a week i.e. on Sunday between 10.00 a.m. to 01.00 noon, till further orders and shall cooperate with the investigating agency.
- e) The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the case.

[URMILA JOSHI-PHALKE, J.]