



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

CRIMINAL APPLICATION (ABA) NO. 112 OF 2024

SANTOSH S/O RAMSING RATHOD

Vrs.

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

Shri A. K. Bhangde, Advocate for applicant.
Shri S. S. Hulke, A. P. P. for respondent-sole.

CORAM: URMILA JOSHI-PHALKE, J.
DATE : 29/02/2024.

1. Apprehending the arrest at the hands of police in connection with Crime No.21/2024 registered with Police Station Karanja (Gramin), Dist. Washim for the offence punishable under Sections 420 and 506 of IPC, the applicant approached to this Court for grant of pre-arrest bail.

2. The accusation against the present applicant is on the basis of report lodged by Kishor Rathod alleging that the informant is an agriculturist and intending to irrigate his land with full source of water. Therefore, he applied for Manrega Scheme for digging the Well in that field. As he was not aware of the process, therefore, he approached to the applicant. The present applicant obtained the essential documents for submitting the on-line form and demanded some amount from him and accordingly, obtained the amount and duped the

informant. On the basis of said report, police have registered the crime against the present applicant.

3. Learned counsel for the applicant submitted that as far as the allegations are concerned, which are false one, after applicant is protected by granting ad-interim protection, he has attended the police station and co-operated with the Investigating Agency. He further submitted that during investigation, it reveals that the work of digging of the Well is already completed. As far as custody of the present applicant for recovery of the amount is concerned, which is not required and therefore, interim protection granted to the present applicant deserves to be confirmed.

4. Learned APP strongly opposed the said application and submitted that as far as declaration given are concerned, which are prior to lodging of the FIR. He submitted that present applicant who is a public servant, has obtained money on the pretext of assisting the complainant in making the application and obtained the amount illegally. Therefore, his custodial interrogation is required. In view of that, application deserves to be rejected.

5. After hearing learned counsel for the applicant and learned APP for the State, perused the investigation papers. From the investigation papers, it reveals that present applicant is serving as Gram Sevak in Gram Panchayat, Mahagaon. As per the allegations, the complainant was intending to dig the Well in his field.

Therefore, he approached the present applicant. As far as the work of digging of the Well is already completed, it shows that the on-line form of the informant was submitted and thereafter, the amount for digging the Well through Manrega Scheme is already sanctioned. The statements of the witnesses show that the present applicant has obtained money from the said work, except their allegation that there is no material to connect the present applicant with the alleged offence, even accepting the contention as it is, the custodial interrogation of the present applicant is not required. The applicant has already co-operated with the Investigating Agency and attended the Police Station. In view of the guidelines issued by the Hon'ble Apex Court in the case of **Satender Kumar Antil Vrs. Central Bureau of Investigation**, reported in **(2022) 10 SCC 51** wherein the Hon'ble Apex Court directed that as far as the offence punishable under which the punishment of less than 7 years is provided, the notice under Section 41-A is to be issued. Even for cognizable offence, an arrest is not mandatory, can be seen from the mandate of the provision. If the officer is satisfied that the person has committed cognizable offence punishable with imprisonment for a term which may be less than 7 years or which may extend to the same and find an arrest would only follow when he is satisfied that there is reason to believe or suspect the said person has committed offence and there is necessity for an arrest. This provision mandates the police officer to record the reasons in

writing while making the arrest. Thus, the Police Officer is duty bound to record the reasons for arrest in writing. The consequence of non-compliance of Section 41-A of the Code of Criminal Procedure shall certainly tenor the benefit of person suspected of the offence.

6. Admittedly, the Investigating Officer has not issued any notice to the present applicant under Section 41-A nor he has assigned any reason regarding the requirement of the arrest of the present applicant.

7. In the light of the fact that there is no compliance under Section 41-A, the applicant has already attended the Police Station and co-operated with the Investigating Agency. The 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 arrest in connection with Crime No.21/2024 registered with Police Station Karanja (Gramin), Dist. Washim for the offence punishable under Sections 420 and 506 of IPC, the applicant be released on anticipatory bail on executing PR bond of Rs.25,000/- with one solvent surety in the like amount.

iii] The applicant shall attend concerned Police Station once in a week on Sunday

between 10.00 a.m. to 1.00 p.m. till further orders and shall co-operate with the investigation agency.

iv] The applicant shall not induce, threat or promise to any witnesses, who are acquainted with the facts of the present case.

8. The application is disposed of.

[URMILA JOSHI-PHALKE, J.]

Choulwar