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15.aba.188.2024

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

CRIMINAL APPLICATION (ABA) NO.188 OF 2024

Asha d/o Charandas Patil

Vs.

State of Maharashtra, Through Police Station Officer, Police Station,
Shegaon,

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

Court's or Judge's orders

Mr. Samyak Chahande, Advocate h/f Mr. P. M. Ukey, Advocate for
applicant.

Ms. H. S. Dhande, APP for respondent/State.

Mr. S. P. Sonwane, Advocate for complainant.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 18/03/2024

1. By this application, the applicant is seeking pre-arrest bail in connection with Crime No.49/2024 registered with Police Station Shegaon for the offence punishable under Section 420 read with Section 34 of the Indian Penal Code.

2. As per the allegation in the FIR, the applicant induced the informant to invest the amount of Rs.5,00,000/- on which she would get Rs.15,00,000/- from the Manager of the Institution. It is alleged that the informant was well acquainted with the present applicant and therefore, by believing the words, she has invested the amount and she was duped by the present applicant. On the basis of which the crime is registered against the present applicant.

3. Learned Counsel for the applicant submitted that notice under Section 41-A of the Code of Criminal Procedure was already issued to her and she has complied with the notice, therefore, her custodial interrogation is not required. She has not received any amount.

4. I have perused the recitals of the FIR and the notice issued under Section 41-A of the Code of Criminal Procedure. The offence alleged is punishable with imprisonment up to seven years. In view of the observations of the Hon'ble Apex Court in the case of **Satender Kumar Antil Vs. Central Bureau of Investigation** reported in **(2022) 10 SCC 51** wherein the scope of Section 41 is dealt by the Hon'ble Apex Court and held that Section 41 under Chapter V of the Code deals with the arrest of persons. Even for a cognizable offence, 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 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.

5. 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. Similarly, the police officer shall record reasons when he/she chooses not to arrest. There is no requirement of the aforesaid procedure when the offence alleged is more than seven years, among other reasons.

6. The consequence of non-compliance with Section 41 shall certainly inure to the benefit of the person suspected of the offence. Resultantly, while considering the application for enlargement on bail, Courts will have to satisfy themselves on the due compliance of this provision. Any non-compliance would entitle the accused to a grant of bail.

7. Thus, in view of the Judgement of the Hon'ble Apex Court, the police officer is duty-bound to record the reasons for the arrest. On perusal of

the Section 41-A notice, it nowhere discloses that for what purpose the custody of the present applicant is required. Thus, there is no compliance of Section 41-A of the Code of Criminal Procedure, in view of the decision of the Hon'ble Apex Court.

8. The Investigating Officer shall issue fresh notice under Section 41-A of the Code of Criminal Procedure to the applicant stating the reasons why her custody is required.

9. In the meantime, considering the allegation immediate custodial interrogation of the present applicant is not required, therefore she can be protected by granting ad-interim protection. In view of that, I proceed to pass following order.

ORDER

(i) In the event of arrest in connection with Crime No.49/2024 registered with Police Station Shegaon for the offence punishable under Section 420 read with Section 34 of the Indian Penal Code, the applicant **Asha d/o Charandas Patil** be released on ad-interim anticipatory bail on executing PR bond in the sum of Rs.25,000/- with one solvent surety in the like amount.

(ii) The applicant shall attend the concerned Police Station once in a week on Monday between 10.00 am. to 1.00 p.m. and the Investigating Officer shall record her presence.

(iii) The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the case.

Stand over after two weeks.

(URMILA JOSHI-PHALKE, J.)