



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

CRIMINAL APPLICATION NO. 605 OF 2024

SAU. SONALI RAMANAND JOSHI

VERSUS

**THE STATE OF MAHARASHTRA THROUGH PSO RAMNAGAR WARDHA
TAH DIST WARDHA**

WITH

CRIMINAL APPLICATION NO. 606 OF 2024

ANIKET RAMESH KILHE

VERSUS

**THE STATE OF MAHARASHTRA THROUGH PSO RAMNAGAR WARDHA
TAH DIST WARDHA**

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

Court's or Judge's orders.

Shri Amol Mardikar, Advocate for applicants
Shri A.V. Palshikar, Advocate for the non-applicant/State
Shri D.M. Khandait, Advocate for the intervenor

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 27.09.2024

1. By these applications, the applicants are seeking pre-arrest bail in connection with Crime No.658 of 2024 registered for offences punishable under Section 115(1), 118(1), 296, 333, 351(3) of the Bhartiya Nyay Sanhita, 2023 and under Section 24 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, with police Station, Ramnagar, Wardha.

2. The crime is registered on the basis of the report lodged by Kaushalya Liladhar Joshi, who is the mother-in-law of one of the

applicants, namely Sonali Ramanand Joshi on an allegation that she is 73 years old and residing along with her son and daughter-in-law. It is alleged that she was abused in filthy language and also assaulted by her daughter-in-law with the help of Aniket Ramesh Kolhe (applicant in application No.606/2024), who is serving as a Police Constable. It is further alleged that on 29.07.2024 the key of the backdoor of the house was sought by her daughter-in-law, which was refused to be handed over and on that count, the mother-in-law was abused. The son of the complainant, i.e. Ramanand disclosed that on 24.7.2024, the applicant-Aniket had been to the beauty parlour of the daughter-in-law of the informant under the influence of liquor. He had abused the son of the informant and threatened with dire consequences. On the basis of the said report, the police have registered the crime against the present applicants.

3. I have heard the learned counsel for the applicants, who submitted that the offences alleged are punishable with imprisonment for less than seven years and in view of that if the investigating officer is intending to arrest, then the notice under Section 41A is required in view of the decision of the Hon'ble Apex Court in the case of ***Satender Kumar Antil Vs. Central Bureau of Investigation & Anr.*** reported in 2022 LiveLaw (SC) 577. He further submitted that as far as the custodial interrogation of the applicants are concerned, it is not required. In view of that they be protected by granting anticipatory bail.

4. The learned APP strongly opposed the present applications and submitted that an old lady was not only threatened but also, with the help of the Police Constable, assaulted by the daughter-in-law of the present informant. Considering the circumstances under which the alleged incident has taken place, no case is made out for grant of anticipatory bail.

5. Heard the learned counsel for the applicants and the learned APP for the State, perused the recitals of the FIR and the investigation papers. There is no dispute as to the fact that the applicant, namely Sonali Ramanand Joshi, who is the daughter-in-law of the informant, has abused and assaulted her own husband with the help of the another co-accused, who is one of the applicants herein.

6. It is pertinent to note that the co-accused-Aniket Ramesh Kolhe is serving as a Police Constable. There is no dispute as to the fact that the alleged offences are punishable with imprisonment up to seven years and not extending 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 & Anr.*** (supra), which laid down the guidelines as far as the offences for which punishment is up to seven years is provided. As per the said guidelines, under Section 41, Chapter 5 of the CrPC, which 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 the 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 acquainted with 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.

7. Section 35 of the Bhartiya Nagrik Surksha Sanhita, 2023 (BNSS) 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. It is further observed by the Hon'ble Apex Court that the consequence of non-compliance with Section 35 of the BNSS shall certainly inure to the benefit of the person suspected of the offence.

8. Thus, considering the above guidelines, the duty of the Investigating Officer is to record the reasons, as to why the arrest of

the present applicants is required. The said compliance is not done by the Investigating Officer in the present case.

9. Considering the allegations against the present applicants, one who is the daughter-in-law of the informant and other is the Police Constable, at this stage no case is made out for grant of anticipatory bail, as merely because the custodial interrogation is not required, is not sufficient to protect the applicants. It can be one of the consideration and not the sole consideration. However considering the punishment provided for the offence, it is the duty of the Investigating Officer to comply with the provisions i.e. Section 35 of the BNSS, if he intends to arrest the applicants by recording the reasons and by issuing notice to the applicants and if the Investigating Officer does not intend to arrest the present applicants, he/she has to comply by issuing the notice under Section 35(3) of the BNSS.

10. In view of that the application is hereby rejected. The Investigating Agency shall follow the procedure in view of the mandate of the Hon'ble Supreme Court decision in ***Satender Kumar Antil Vs. Central Bureau of Investigation & Anr.*** (supra). The applications stand **disposed of**.

JUDGE