2025:BHC-NAG:6524

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

CRIMINAL APPLICATION (ABA) NO.87 OF 2025

Bhushan Maroti Mahalle
Vs.
State of Maharashtra, through Police Station Officer, Gadge Nagar, Amravati, District Amravati

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

Mr. Anil Mardikar, Senior Counsel a/b V. R. Deshpande, Counsel for the applicant.
Mr. N. B. Jawade, APP for non-applicant/State.
Mr. D. A. Sharma, Counsel with Mr. R. R. Chhabra, Counsel for the complainant.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 08/07/2025

1. Apprehending the arrest at the hands of police in connection with Crime No.48/2025 registered with Police Station Gadge Nagar, Amravati, District Amravati for the offence punishable under Sections 406 and 420 of the Indian Penal Code, the applicant approached this Court for grant of pre-arrest bail.

2. As per the case of the prosecution, the complainant is the Bachelor of Architecture from VNIT Nagpur and she had interest in the Fashion Industry, and therefore, she started her own website for online sales and purchase of readymade clothes. The father of the informant had invested around Rs.65 Lakhs in the said business with the complainant. The website

was designed by the present applicant, who is a childhood friend of the complainant. Due to the pandemic lockdown was imposed and thereby difficulties in transporting the orders, received online. At that time, applicant told the complainant that she may come to Pune, from where she can get rid of the difficulties in transportation and she can do her business also. By trusting the words of the present applicant, she went at Pune and started business along with the present applicant. It is alleged that the present applicant has obtained the loan in the name of the company and used it for its own benefits. He has also forged documents by forging the signature of the father of the complainant. On the basis of the said allegations, the crime was registered against the present applicant.

3. Heard learned Senior Counsel for the applicant, who submitted that as far as the dispute regarding the business is concerned, the proceeding before the National Company Law Tribunal at Mumbai (NCLT) is already pending. He submitted that the documents on record show that the sanction letter bears the signature of the complainant as well as her father. Thus, with their consent, the loan was obtained. The house of the mother of the present applicant was mortgaged for the said loan. At the most, it is a business dispute. As far as the custodial interrogation is concerned, which is not required as the applicant has already cooperated with the

investigating agency, in view of the directions of this Court. He submitted that considering the nature of the transaction between the complainant and the present applicant, the application deserves to be allowed by confirming the ad-interim protection to the present applicant.

4. Learned APP and learned Counsel for the complainant strongly opposed for the said application. Learned APP submitted that the applicant is involved in forging of the signature of the father of the complainant. He invited my attention towards the investigation papers and statement of Bhaskar Ganpatrao Bundile, who has stated that no objection certificate does not bear his signature and on the basis of the forged signature, the loan was obtained by the present applicant. He submitted that the applicant has not attended the concerned Police Station since last two months and his custodial interrogation is required for ascertaining the facts as to the forgery and, therefore, the application deserves to be rejected.

5. On hearing both sides and on perusal of the investigation papers, it reveals that the dispute between the complainant and the present applicant as to the business and the proceeding before the NCLT is pending wherein the issue regarding the ownership of the business would be decided. As far as the loan is concerned, it appears that the applicant

has obtained the loan and sanction letter not only bears the signature of the applicant, but also bears the signature of the complainant and her father. Admittedly, the offence is registered under Sections 420 and 406 of the Indian Penal Code for which, the punishment imposed is less than seven years. Section 41 under Chapter V of the Code of Criminal Procedure deals with the arrest of 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, that the said person has committed an offense, and there is a necessity for an arrest.

6. The Hon'ble Apex Court in the case of ***Satender Kumar Antil vs Central Bureau Of Investigation*** reported in **(2022) 10 SCC 51** wherein while dealing with Section 41 it is observed that the 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 offense alleged is more than seven years, among other reasons.

7. The consequence of non-compliance with Section 41 shall certainly inure to the benefit of the person suspected of the offense. 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.

8. In view of the observation of the Hon'ble Apex Court, here admittedly there is no such compliance in view of Section 41 of the Cr.P.C. Moreover, the applicant was protected by granting anticipatory bail and initially, he has attended the concerned Police Station. As far as the aspect of the forgery is concerned, for obtaining the specimen signature, some conditions can be imposed on the present applicant. In view of that, the application deserves to be allowed. Accordingly, I proceed to pass following order:

ORDER

(i) The application is allowed.

(ii) The interim protection granted to the present applicant by order dated 11.02.2025 in connection with Crime No.48/2025 registered with Police Station Gadge Nagar, District Amravati for the offence punishable under Sections 406 and 420 of the Indian Penal Code, is confirmed on the condition that the applicant shall attend the concerned Police Station once in a week i.e. on Monday between 10.00 a.m. to 1.00 p.m. and shall cooperate with the investigating agency.

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

(iv) The applicant shall furnish his detailed address, cell phone number along with the address proof before the investigating agency.

The application is disposed of.

(URMILA JOSHI-PHALKE, J.)

Sarkate