



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

CRIMINAL APPLICATION (ABA) NO.345 OF 2025

Govinda Kashiram Rokade

Vs.

State of Maharashtra, through Police Station Officer, Police Station
Dhamangaon Badhe, District Buldhana

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

Court's or Judge's orders

Mr. S. V. Sirpurkar, Counsel for the applicant.
Mr. Anant Ghogre, APP for non-applicant /State.

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

1. Apprehended the arrest at the hands of Police in connection with Crime No.76/2025 for the offence punishable under Sections 170 and 420 read with Section 34 of the Indian Penal Code, the applicant approached this Court for grant of pre-arrest bail.

2. The crime is registered on the basis of report lodged by Ananda Narayan Janjal on an allegation that one Ajay Naik prior to two years of registration of the crime met him and informed him that his two friends are acquainted with the present applicant, who has found huge amount of old gold during the construction of his house and willing to sale out the same for Rs.25 Lakhs per kg. It is alleged that Ajay took his two companions to the

house of the applicant. The complainant along with his two companions decided to purchase 1 kg gold and paid the amount. However, he has not received any gold and he is duped. It is further alleged that when they were about to purchase the gold, three to four Police persons stopped their vehicle and at that time Ajay and his companion fled away from the spot of incident, but the Police have nabbed them.

3. Learned Counsel for the applicant submitted that with the baseless and false allegations, the applicant is implicated in the alleged offence. There is an inordinate delay in lodging the FIR. As far as the custodial interrogation is concerned, the applicant has already cooperated with the investigating agency by attending the Police Station. The mandatory requirement of issuance of notice is not complied by the investigating agency. The offences alleged are punishable with imprisonment up to seven years. In view of that, the applicant be released on anticipatory bail.

4. Learned APP strongly opposed the said application on the ground that the amount of Rs.25 Lakhs is yet to be recovered, in view of that, his custodial interrogation is required.

5. On hearing both sides and on perusal of the investigation papers, it reveals that the alleged offence registered against the present applicant is

under Section 170 and 420 read with Section 34 of the Indian Penal Code, which are punishable with imprisonment up to seven years. Admittedly, there is no compliance by issuing the notice under Section 41, it is the mandatory requirement. In view of the observation of the Hon'ble Apex Court in the case of **Satender Kumar Antil Vs. Central Bureau of Investigation and Anr.** reported in **2022 LiveLaw (SC) 577**, wherein the Hon'ble Apex Court 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. This provision mandates the police officer to record his reasons in writing while making the arrest. The consequence of non-compliance with Section 41 shall certainly inure to the benefit of the person suspected of the offence.

6. In view of the observation of the Hon'ble Apex Court, the applicant has made out a case for grant of anticipatory bail. Accordingly, I proceed to pass following order:

ORDER

(i) The application is allowed.

(ii) In the event of arrest, the applicant **Govinda Kashiram Rokade** shall be released on anticipatory bail, in connection with Crime No.76/2025 registered with Police Station Dhamangaon Badhe, District Buldhana for the offence punishable under Sections 170 and 420 read with Section 34 of the Indian Penal Code, on executing PR Bond of Rs.25,000/- with one solvent surety of like amount.

(iii) The applicant shall attend the concerned Police Station once in a week on Tuesday between 10.00 a.m. to 1.00 p.m. and shall cooperate with the investigating agency, till filing of the charge-sheet.

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

(v) The applicant shall attend the proceeding before the trial Court without seeking any exemption unless there are exceptional circumstances.

The application is disposed of.

(URMILA JOSHI-PHALKE, J.)