



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

**CRIMINAL APPLICATION (ABA) NO.559 OF 2025**

Prasad s/o Dattatraya Suryawanshi

Vs.

The State of Maharashtra through Police Station Officer, Police Station,  
Wathoda, District Nagpur

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

Court's or Judge's orders

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Mr. J. S. Wankhede, Counsel for the applicant.

Mr. C. A. Lokhande, APP for the non-applicant/State.

**CORAM : URMILA JOSHI-PHALKE, J.**

**DATED : 13/08/2025**

1. Apprehending the arrest at the hands of police in connection with Crime No.217/2025 registered with Police Station Wathoda, District Nagpur for the offence punishable under Section 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 one Pankaj Waghmare on an allegation that the wife of the informant namely, Seema Waghmare has invested some amount with the applicant on the pretext of investment in the share market, as the present applicant has assured that the wife of the informant will get handsome returns from the above said investment in the share

market. It is contended that he had paid an amount of Rs.6,00,000/- in cash to the present applicant. Since the CIBIL score of the first informant was not proper, the present applicant advised the informant that if he invested an amount of Rs.6,00,000/-, then he will get good returns. On the basis of the said report, the crime is registered against the present applicant. It is further alleged that though he has invested the amount, but he has not received the returns and he is duped.

3. Heard learned Counsel for the applicant, who submitted that by understanding the entire scheme, the informant has invested the amount. Thus, he has invested the amount on assurance that he would get the good handsome returns. So, knowingly, he has invested the amount. As far as the custodial interrogation is concerned, which is not required. There is no compliance under Section 35 (2) of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023. In view of that, the applicant be protected by confirming the anticipatory bail.

4. Learned APP strongly opposed the said application and submitted that on the false promise of getting handsome returns, the amount was obtained and invested, 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 informant has invested the amount by understanding the entire scheme, as there was a promise of getting the handsome amount, knowingly, he has invested the amount. Thus, considering the fact that the allegation levelled against the present applicant that he has obtained the investment and not returned the amount. The immediate custodial interrogation is not required. In view of that the interim protection granted to the present applicant deserves to be confirmed. Moreover, the offence alleged is punishable with imprisonment up to seven years. In view of the guidelines issued by 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 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. 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. The application of the present applicant 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 28.07.2025 is hereby confirmed on the condition that the applicant shall attend the concerned Police Station once in a week on Monday between 10.00 a.m. to 1.00 p.m. till filling of the charge-sheet 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.

The application is disposed of.

**(URMILA JOSHI-PHALKE, J.)**