



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

CRIMINAL APPLICATION (BA) NO. 1159 OF 2024

Vyenkaty Ankulu Burle Vs State Of Maharashtra

AND

CRIMINAL APPLICATION (BA) NO. 1183 OF 2024

Vivek S/O Ankush Kumbhar Vs State Of Maharashtra

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. Sunil Manohar, Senior counsel with Mr. S.D. Chande, counsel with Ms P.M.Mane, counsel for applicant. [BA 1159/2024]

Mr. M.V. Rai, counsel for applicant [BA 1183/2024]

Mrs. Sneha Dhote, APP for non-applicant/State. [Both the applications]

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 11/02/2025.

1. By these applications, the applicants are seeking bail in connection with Crime No. 81/2024 registered with police Station Ashti, Tah. Charmorshi, District Gadchiroli for the offence punishable under Sections 409, 420, 465, 468, 471 read with Section 34 of the Indian Penal Code, 1860. The applicant - Vyenkaty Ankulu Burle is accused no.1 in Criminal Application (BA) No. 1159 of 2024 arrested on 06/06/2024; whereas the applicant – Vivek Ankush Kumbhar in Criminal Application No. 1183 of 2024 is arrested on 14/06/2024.

2. The crime is registered on the basis of a report lodged by complainant Murlidhar Shankar Bawane alleging that the accused from 01/11/2022 to 17/11/2024 has collected 59,947.60 qtl of paddy from the paddy purchase center Markanda. The accused persons only showed that they

have purchased 59,947.60 qtl of paddy, but they have only purchased 31532.58 qtl of paddy. The remaining 28,415.02 qtl of paddy was misappropriated. The per quintal price of the said paddy was Rs. 2040, and it goes up to Rs. 5,79,66,640.80/-.

3. It is further alleged that the applicant in Criminal Application (BA) No. 1183/2024 is the employee and is serving as Sub-Divisional Manager in the Office of the Maharashtra State Tribal Development Corporation. He submitted that as far as the allegation against him is concerned, which is only to the extent of dereliction in duty that he has not complied with the directions given to his office, and therefore, he was arraigned as an accused. As far as the accused no. 1, who is the applicant in Criminal Application (BA) No. 1159/2024, is concerned, it is alleged that he has purchased the grain and misappropriated the same. On the basis of the said report, police have registered the crime against the present applicants as well as other co-accused.

4. Heard learned Senior Counsel Mr. S.V. Manohar for the applicant, who submitted that the application is filed mainly on three grounds. The first ground is that there is no compliance by informing the grounds of arrest to the present applicants after he is arrested.

5. He submitted that it is a violation of Article 22 of the Constitution of India, and on that ground itself, the applicants are entitled to be released on bail, as the arrest itself is not valid. Beside the said ground, there are other

grounds also; the offence under Section 406 is inapplicable as there was no entrustment of any property, and if the prosecution is charging that the accused has committed an offence under Section 406, there is no notice under Section 41, which is mandatory.

6. He further submitted that, considering the fact that there is no compliance by informing the grounds of arrest to the present applicants or his relatives, it is sufficient to release the present applicants on bail.

7. In support of his contention, he placed reliance on the decision of *Vihaan Kumar Vs State of Haryana and another in Criminal Appeal arising out of Special Leave Petition (Crl.) No. 13320 of 2024, decided on 07/02/2025.*

As far as ground regarding applicability of Sections 406 and 420 is concerned, he placed reliance in the case of *Delhi Race Club (1940) Limited and others Vs State of Uttar Pradesh and another [(2024) 10 SCC 690]*; and order passed in *Criminal Misc. Application No. 70/2024 (Shri Gajanan Ramesh Kotlawar Vs State of Maharashtra) decided on 05/09/2024*; and the order passed in Principal Seat in *Criminal Bail Application (Suraj Satish Chavan Vs Directorate of Enforcement and Another) decided on 04/02/2025.*

8. Learned counsel, Mr. M.V. Rai also adopted the same contention and submitted that on the ground that the grounds of arrest are not informed to the accused as well as his relatives to sufficient to release the applicants on bail. In view of that, applications deserves to be allowed.

9. Per contra, learned APP strongly opposed the said application and submitted that the investigation papers show the involvement of the present applicants in the alleged offence. The applicant in Criminal Application (BA) No. 1183/2024 is the employee, and in connivance with the other co-accused, he has committed the misappropriation and cheated the various frauds. Thus, considering the prima facie case against the present applicant, the applications deserves to be rejected. She fairly admitted that there is no compliance as far as the grounds of arrest are concerned, as she has instructions from the investigating officer, who informed her that there is no such compliance.

10. Before entering into the merits of the case is concerned, it is necessary to go through the observations of the Hon'ble Apex Court, as far as the recent judgment passed on 07/02/2025 is concerned. Wherein the Hon'ble Apex Court has considered the procedure to be followed for arresting a person without a warrant, and it is held that;

7. Sub-Section (1) of Section 41 of Cr.P.C. lists cases where police may arrest a person without a warrant. The corresponding provision in the Bhartiya Nagarik Suraksha Sanhita, 2023 is Section 35. Section 41 of Cr. P.C. reads thus;

“41. When police may arrest without warrant.—(1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person—

- (a) who commits, in the presence of a police officer, a cognizable offence;
- (b) against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has

committed a cognizable offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine, if the following conditions are satisfied, namely:—

- (i) the police officer has reason to believe on the basis of such complaint, information, or suspicion that such person has committed the said offence;
- (ii) the police office is satisfied that such arrest is necessary—
 - (a) to prevent such person from committing any further offence; or
 - (b) for proper investigation of the offence; or
 - (c) to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or
 - (d) to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer; or
 - (e) as unless such person is arrested, his presence in the Court whenever required cannot be ensured, and the police officer shall record while making such arrest, his reasons in writing.

Provided that a police officer shall, in all cases where the arrest of a person is not required under the provisions of this sub-section, record the reasons in writing for not making the arrest.

(ba) against whom credible information has been received that he has committed a cognizable offence punishable with imprisonment for a term which may extend to more than seven years whether with or without fine or with death sentence and the police officer has reason to believe on the basis of that

information that such person has committed the said offence;

(c) who has been proclaimed as an offender either under this Code or by order of the State Government; or

(d) in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing; or

(e) who obstructs a police officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody; or

(f) who is reasonably suspected of being a deserter from any of the Armed Forces of the Union; or

(g) who has been concerned in, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been

concerned in, any act committed at any place out of India which, if committed in India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or otherwise, liable to be apprehended or detained in custody in India; or

(h) who, being a released convict, commits a breach of any rule made under sub-section (5) of Section 356; or

(i) for whose arrest any requisition, whether written or oral, has been received from another police officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issued the requisition.

(2) Subject to the provisions of Section 42, no person concerned in a non-cognizable offence or against whom a complaint has been made or credible information has been received or reasonable suspicion

exists of his having so concerned, shall be arrested except under a warrant or order of a Magistrate.”

(emphasis added)

11. While deliberating on the issue on the compliance of Section 41, the Hon’ble Apex Court has also considered article 22(1) of the constitution, which read as under;

“22(1). No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.

12. By referring the catena of decision in para-14, it is held by the Hon’ble Apex Court that thus the requirement informing the person arrested of the grounds of arrest is not a formality but a mandatory constitutional requirement. Article 22 is included in Part III of the Constitution under the heading of Fundamental Rights. Thus, it is the fundamental right of every person arrested and detained in custody to be informed of the grounds of arrest as soon as possible. If the grounds of arrest are not informed as soon as may be after the arrest, it would amount to a violation of the fundamental right of the arrestee guaranteed under Article 22(1). It will also amount to depriving the arrestee of his liberty. The reason is that, as provided in Article 21, no person can be deprived of his liberty except in accordance with the procedure established by law.

The procedure established by law also includes what is provided in Article 22(1). Therefore, when a person is arrested without a warrant, and the grounds of arrest are not informed to him, as soon as may be, after the arrest, it will amount to a violation of his fundamental right guaranteed under Article 21 as well. In a given case, if the mandate of Article 22 (1) is not followed while arresting a person or after arresting a person, it will also violate fundamental right to liberty guaranteed under Article 21, and the arrest will be rendered illegal. On the failure to comply with the requirement of informing grounds of arrest as soon as may be after the arrest, the arrest is vitiated. Once the arrest is held to be vitiated, the person arrested cannot remain in custody even for a second.

13. Thus, in view of the above observations, it is settled by the Hon'ble Apex Court that if without communicating the grounds of arrest, if the arrest is effected by the investigating agency then the said person cannot be detain in custody. The Hon'ble Apex Court concluded as under;

- a) The requirement of informing a person arrested of grounds of arrest is a mandatory requirement of Article 22(1);
- b) The information of the grounds of arrest must be provided to the arrested person in such a manner that sufficient knowledge of the basic facts constituting the grounds is imparted and communicated to the arrested person effectively

in the language which he understands. The mode and method of communication must be such that the object of the constitutional safeguard is achieved;

- c) When arrested accused alleges non-compliance with the requirements of Article 22(1), the burden will always be on the Investigating Officer/Agency to prove compliance with the requirements of Article 22(1);
- d) Non-compliance with Article 22(1) will be a violation of the fundamental rights of the accused guaranteed by the said Article. Moreover, it will amount to a violation of the right to personal liberty guaranteed by Article 21 of the Constitution. Therefore, non-compliance with the requirements of Article 22(1) vitiates the arrest of the accused. Hence, further orders passed by a criminal court of remand are also vitiated. Needless to add that it will not vitiate the investigation, charge sheet and trial. But, at the same time, filing of charge-sheet will not validate a breach of constitutional mandate under Article 22(1);
- e) When an arrested person is produced before a Judicial Magistrate for remand, it is the duty of the Magistrate to ascertain whether compliance

with Article 22(1) and other mandatory safeguards has been made; and

- f) When a violation of Article 22(1) is established, it is the duty of the court to forthwith order the release of the accused. That will be a ground to grant bail even if statutory restrictions on the grant of bail exist. The statutory restrictions do not affect the power of the court to grant bail when the violation of Articles 21 and 22 of the Constitution is established.

14. In light of the above observations, it is not necessary to enter into the merits of the case, as the arrest itself is not valid when the grounds are not communicated to the accused. In view of that, both applications deserve to be allowed. Accordingly, I proceed to pass the following order:

- a] The criminal applications are **allowed**.
- b] The applicant namely ***Vyenkaty Ankulu Burle in Criminal Application (BA) No. 1159/2024*** and applicant namely ***Vivek Ankush Kumbhar in Criminal Application (BA) No. 1183/2024*** shall be released on bail in connection with Crime No. 81/2024 registered with Police Station Ashti, Tah. Charmorshi, District Gadchiroli for the offence punishable under Sections 409, 420, 465, 468, 471 read with Section 34 of the Indian Penal Code, 1860, on executing P.R. Bond of Rs. 50,000/- each with one solvent surety in the like amount.

- c] The applicants shall attend the concerned police station as and when required for the investigation purpose.
 - d] The investigating officer shall issue notice in advance of seven days seeking their presence for the purpose of investigation and they shall cooperate with the investigating agency.
 - e] The applicants shall not induce, threat or promise any witnesses who are acquainted with the facts of the present case.
 - f] The applicants shall not leave the jurisdiction of Gadchiroli District without prior permission of the District and Additional Sessions Gadchiroli.
 - g] The applicants shall furnish the address along with their address proof and names of two relatives along with their address proof.
15. Both the applications are **disposed of**.

[URMILA JOSHI-PHALKE, J.]