



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

CRIMINAL APPLICATION (ABA) NO. 501 OF 2024

Shubham Chandramani Paunikar 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. A.Y Humne, counsel for applicant.

Mrs. R.V. Sharma, APP for non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 30/08/2024.

1. Apprehending the arrest at the hands of police, in connection with Crime No. 338/2023 registered with Police Station Butibori, Tq. Hingana, District Nagpur for the offence punishable under Section 407 read with Section 34 of the Indian Penal Code, 1860, the applicant approached this Court for grant of pre-arrest bail.

2. The crime is registered on the basis of a report lodged by Jagdish Gopal Bokade, alleging that the present applicant, along with co-accused Budhadip Harichandra Gajbhiye, did not pay the entire loan amount which was obtained by the group of women. It is alleged that the informant is a Branch Manager of financial institutions, i.e., Bharat Financial Inclusion Limited, Branch at Butibori. The applicant was working as an agent with the said bank. There were some groups of women to whom the loans were sanctioned, and the present applicant, being an agent, was communicating and obtaining the amount of the installments from the said women, but he has not deposited

the said loan amount in their respective accounts or deposited the less amount and misappropriated the amounts. On the basis of the said report, police have registered the crime against the present applicant.

3. Learned counsel for the applicant submitted that, as far as the present applicant is concerned, his involvement is on the basis of the false report filed by the Branch Manager. He submitted that the investigating officer has issued the notice under Section 41-A of Cr.PC., which itself is sufficient to show that custodial interrogation of the present applicant is not required. Moreover, the punishment provided is upto seven years. In view of that, the applicant be protected by granting anticipatory bail.

4. Learned APP strongly opposed the said application on the ground that, considering the misappropriation amount and the involvement of the present applicant in the financial scam, the custodial interrogation of the present applicant is required. In view of that, the application deserves to be rejected.

5. After hearing learned counsel for the applicant and learned APP for the state, perused the recitals of the FIR, from which it reveals that the FIR is lodged by the Branch Manager of the said financial institutions, wherein the present applicant was working as an agent. As part of the financial transactions of the said financial institutions, they were sanctioning the loan to various groups of women organizations. Accordingly, some organizations have

obtained the loan from the bank, but the installment amount was not deposited by the present applicant in their respective accounts and misappropriated the same.

6. Learned APP admitted that the notice was issued to the applicant under Section 41-A of Cr.P.C., and the issuance of notice under Section 41-A of Cr.P.C. itself is sufficient to show that custodial interrogation of the present applicant is not required. Moreover, the punishment provided for the alleged offence is upto the seven years.

7. Considering the same, the observation of the Hon'ble Apex Court in the case of ***Satender Kumar Antil Versus Central Bureau Of Investigation & Anr. [2022 LiveLaw (SC) 577]*** is relevant, wherein it is observed that Section 41 under Chapter V of the Code 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. Such necessity is drawn to prevent the committing of any further offense, 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

persons from making any inducement, threat, or promise to any person according to the facts, so as to dissuade him from disclosing said facts either to the court or to the police officer.

8. This 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.

9. The consequence of non-compliance with Section 41 shall certainly inure to the benefit of the person suspected of the offense. Section 41A deals with the procedure for appearance before the police officer who is required to issue a notice to the person 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, an arrest is not required under Section 41(1).

10. Thus, issuance of the notice under Section 41-A itself is sufficient to show that, at this moment, the investigating officer has no sufficient reasons to arrest the present applicant. Considering the same, application deserves to be allowed by imposing certain conditions. Accordingly, I proceed to pass the following order;

a] The criminal application is allowed.

- b] In the event of her arrest, in connection with Crime No. 338/2023 registered with police station Butibori, Tq. Hingana, District Nagpur for the offence punishable under Section 407 read with Section 34 of the Indian Penal Code, 1860, the applicant – Shubham Chandramani Paunikar, shall be released on anticipatory bail, on executing PR. bond of Rs. 25,000/- with one solvent surety in the like amount.
- c] The applicant shall attend the concerned police station once in a week on Sunday between 10.00 a.m. to 01.00 p.m. and shall cooperate with the investigating agency.
- d] The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the present case.
- e] The applicant shall furnish his cellphone number and address with address proof along with the names of his two relatives and their address and address proof.
- f] The applicant shall not leave the jurisdiction of Nagpur District without prior permission of this Court.

The application is disposed of.

[URMILA JOSHI-PHALKE, J.]