

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO. 1357 OF 2024

Anand s/o Sukhlal Pardeshi
Age : 44 years, Occ : Service,
R/o. H.No. 90/1, Ward 15,
Sendhwa, Barwani.

..Applicant

VERSUS

The State Of Maharashtra
Through Police Station Officer
Azadnagar Police Station,
Tq. and Dist. Dhule.

..Respondent

...
Advocate for Applicant : Mr. Chaudhari Chetan Barku & Mr. Akash R.
Sharma

APP for Respondent/State : Mr. A.A.A. Khan

...

CORAM : S.G. MEHARE, J.

DATED : SEPTEMBER 25, 2024

ORDER :-

1. Heard learned counsel for the applicant and the learned APP for the State.
2. The applicant seeks pre-arrest bail in Crime No.02 of 2024, registered with Azadnagar Police Station, District Dhule, for the offences punishable under Sections 419, 420, 341, 170, 201, 120(B) and 34 of the Indian Penal Code.
3. The prosecution case, in brief is that a few people impersonating themselves as officers of the GST were stopping the trucks on the highway. There were two teams. One was working in

Maharashtra, and another was in Madhya Pradesh. They were asking for the GST receipts, and when the driver could not show them the GST receipts, they were asked them to pay the penalty. Thereafter, they were offering for settlement to the drivers of the vehicles. They were deducing money from the drivers by contacting the owners of the machinery or goods transported. If the drivers were paying, they were allowing them to transport the goods. It was also their practice to make the calls to the other higher officers who were members of the gang. Thereafter, all the persons were sharing such looted money. For committing offence the accused were using police vehicles. One police constable, the driver, and one ASI are the accused in this case. The accounts to which money was transferred were fake. One of the co-accused who was serving at the bank opened those bank accounts in the name of the servants to get the government scheme. However, another co-accused, who was the brother of the accused working in the bank, was operating those accounts for committing the offence as alleged then. The investigation was done thoroughly. The other co-accused were arrested. This applicant's name came forward as a member of the gang member extracting the money in the State of Madhya Pradesh. The prosecution case is that the police went to his home many times, but he was not present.

4. Learned counsel for the applicant has vehemently argued that the offences for which the crime is registered are punishable to

the extent of seven years. Hence, the police must comply with Section 41A of the Criminal Procedure Code and follow the ratio laid down by the Hon'ble Supreme Court in the case of Satender Kumar Antil Vs. Central Bureau of Investigation and Another, 2022 LiveLaw (SC) 577 and Arnesh Kumar Vs. State of Bihar and Another, (2014) 8 SCR 128. He submits that there is absolutely no material against the applicant. He cannot be arrested for the crime only on the recovery under Section 27 of the Indian Evidence Act and the statement of the co-accused. He has taken the Court through the record. The charge sheet against the applicant is filed under Section 299 of the Criminal Procedure Code. Learned counsel for the applicant further argued that this Court may grant interim protection and direct the applicant to attend the police station. He is ready to cooperate with the investigation. He also argued that other material collected by the prosecution does not establish the nexus of the applicant with the said crime. He is in private service. He has an apprehension of arrest. Hence, he may be granted anticipatory bail.

5. Learned APP would submit that the prosecution has sufficient material to believe that the arrest of the applicant is essential because the evidence came forward against the applicant showing his active involvement in the crime. There were thousands of calls inter-se between all the accused, including the applicant. The offence is serious. They were impersonating them as GST officers and

extracting huge amounts of money from the truck and goods owners. They were asking truck drivers or owners to pay the money in their account numbers to gain confidence that they were the real GST officers. However, after the investigation was done, it transpired that the bank accounts to which the amount was transferred were fake. The learned APP also submitted that there were two groups working on the same highway. One was working in the State of Maharashtra, and other was working in the State of Madhya Pradesh. They had a specific *modus operandi* to stop the vehicles at these two ends, and under threat, they were extracting the money from the truck owners or the drivers. The prosecution is afraid of big fraud played with the government. Considering the nature of the offence, *prima facie*, it can be said that the arrest of the applicant is essential for the reasons mentioned in Section 41 of the Criminal Procedure Code. He would submit that the ratio laid down in Satender Kumar (supra) or Arnesh Kumar (supra) does not apply to this case. No accused can claim that he must be served with notice under Section 41A of the Criminal Procedure Code as a matter of right. The guidelines issued by the Hon'ble Supreme Court in the case of Satender Kumar (supra) are followed. Based upon the allegations and material collected in the crime, the investigation officer is justifiable to say that the arrest of the applicant is essential. He argued that the applicant is the co-accused in the crime. Unless he has been interrogated in police

custody, it would be difficult for the investigation officer to collect incriminating material against him. If anticipatory bail is granted, the prosecution may not be able to convict him for want of cogent and reliable evidence. The offence is committed intellectually. The applicant would not support the prosecution unless he is arrested. The mandate of law laid down by the Hon'ble Supreme Court in the case of Arnesh Kumar (supra) does not apply to this case, as has been argued by the learned counsel for the applicant. The accused of such a serious crime has no right to claim anticipatory bail and notice under Section 41A of the Criminal Procedure Code. He prayed to dismiss the application.

6. Perused the charge sheet placed on record and considered the arguments advanced by the learned counsel for the applicant. The first question is to be answered whether, in each case a notice under Section 41A of the Criminal Procedure Code is mandatory.

7. Section 41 of the Criminal Procedure Code provides for time and situation when the police may arrest the accused without a warrant. The first condition is that the offence should be cognizable. Second would be the term of the conviction with imprisonment for a term which may be less than seven years or which may extend to seven years or with fine. Further, for such an arrest, the police officer has reason to believe on the basis of such complaint, information, or

suspicion that such person has committed the said offence. The police have to satisfy that such arrest is necessary to prevent such person from committing any further offence or for proper investigation of the offence; or to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or 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 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 reason in writing. Further, the police officer opines that the arrest of the person is not required, he has to record the reasons for the same.

8. Section 41A of the Criminal Procedure Code reads thus :

“41A. Notice of appearance before police officer - (1) [The police officer shall]in all cases where the arrest of a person is not required under the provisions of sub-section (1) of Section 41, issue a notice directing 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 cognisable offence, to appear before him or at such other place as may be specified in the notice.

9. The Hon’ble Supreme Court in Satender Kumar (supra) has reproduced para 7.1 of Arnesh Kumar (supra) on the scope of objection of Section 41 and 41-A, which reads thus :

“7.1. From a plain reading of the aforesaid provision, it is evident that a person accused of an offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years with or without fine, cannot be arrested by the police officer only on his satisfaction that such person had committed the offence punishable as aforesaid. A police officer before arrest, in such cases has to be further satisfied that such arrest is necessary to prevent such person from committing any further offence; or for proper investigation of the case; or to prevent the accused from causing the evidence of the offence to disappear; or tampering with such evidence in any manner; or to prevent such person from making any inducement, threat or promise to a witness so as to dissuade him from disclosing such facts to the Court or the police officer; or unless such accused person is arrested, his presence in the Court whenever required cannot be ensured. These are the conclusions, which one may reach based on facts.

7.2. The law mandates the police officer to state the facts and record the reasons in writing which led him to come to a conclusion covered by any of the provisions aforesaid, while making such arrest. The law further requires the police officers to record the reasons in writing for not making the arrest.

7.3. In pith and core, the police officer before arrest must put a question to himself, why arrest? Is it really required? What purpose it will serve? What object it will achieve? It is only after these questions are addressed and one or the other conditions as enumerated above is satisfied, the power of arrest needs to be exercised. In fine, before arrest first the police officers should have reason to believe on the basis of information and material that the accused has committed the offence. Apart from this, the police officer has to be satisfied further that the arrest is necessary for one or the more purposes

envisaged by sub-clauses (a) to (e) of clause (1) of Section 41 CrPC.”

10. In the concluding part of *Satender Kumar* (supra), the Hon’ble Supreme Court issued certain directions. It has been reiterated that the investigating agencies and officers are duty-bound to comply with the mandate of Section 41 and 41A of the Code and directions issued by this Court in *Arnesh Kumar* (supra). Any dereliction on their part has to be brought to the notice of the higher authorities by the Court, followed by appropriate action.

11. In paragraph No. 21 of *Satender Kumar* (supra), the Hon’ble Supreme Court 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 person 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. One more ground on which an arrest may be necessary is when his/her presence is required after arrest for production before the Court and the same cannot be assured.

12. In para 22, it has been further observed that 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. There is no requirement of the aforesaid procedure when the offense alleged is more than seven years, among other reasons. In para 23, it has been observed that 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.

13. Reading Section 41A read with Section 41 of the Criminal Procedure Code and the law laid down by the Hon'ble Supreme Court in the above cases, it is clear that for every such offence mentioned in Section 41 of the Criminal Procedure Code, a notice of appearance as provided under Section 41A of the Criminal Procedure Code is not

essential, unless the investigation officer is satisfied that the arrest of accused is not required as contemplated under Section 41 of the Criminal Procedure Code.

14. There are two types of bail. Pre-arrest, and post-arrest bail. The law laid down by the Hon'ble Supreme Court in the case of Satender Kumar (*supra*), as discussed above, is very specific that it is the duty of the police officer who has reason to believe that the cognizable offence is committed which is punishable for not less than seven years or may extend to seven years to record in writing while making the arrest. The arrest is a process or act by the police to take a person in the custody. That time, the police has to mention the reasons as mentioned in Section 41 of the Criminal Procedure Code. The other conditions the police officer has to follow are that he must satisfy that the said arrest is necessary to prevent the applicant for the purpose and the reasons mentioned in Section 41 (1) of the Criminal Procedure Code. Herein the case, the applicant has yet to be arrested. He is asking for pre-arrest bail. So, the Court is of the view that the Stage to write the reason for arrest is yet to come. Otherwise, it has also been argued that his arrest is necessary for proper investigation of the offence and preventing the applicant from causing the evidence of the offence to disappear or tampering with such evidence. The learned APP has specifically argued that after revealing the name of the applicant in the crime, they visited his

home a few times, but he was not found. Therefore, an inference may be drawn that he has avoided his arrest.

15. The charge sheet is filed against the applicant, showing him absconding. The police have not yet disclosed what is the direct material against the applicant, but other concerned material has shown the nexus of the applicant with the crime. The offence is apparently serious. The offence was committed with the help of police personnel and by using government police vehicles. It is a matter of safety of the businessman and the common man. The Court is agreeable with the arguments of the learned APP for the State that there are reasons to believe that the arrest of the applicant is required. Hence, notice under Section 41A may be dispensed with in this case. The learned APP has correctly expressed an apprehension that if no material would be recovered against the applicant, he may take advantage during the trial that there is nothing against him. Therefore, he may not be tried. The collection of evidence is the first stage of the investigation. The investigation officer is appointed to collect the evidence, known, unknown or hidden. After collecting the evidence, he has to submit the report under Section 173 of the Criminal Procedure Code for proper adjudication, testing the relevance of the evidence and proving the involvement of the accused. It seems that the learned counsel for the applicant has tried to take benefit of the ratio laid down by the Hon'ble Supreme Court in the

case of Satender Kumar (supra) and Arnesh Kumar (supra), which is not applicable to the case at hand. Considering the nature of the offence, and how it has been committed is discovered, the Court is of the view that this is not a fit case to exercise discretion under Section 438 of the Criminal Procedure Code. Hence, the application stands dismissed.

(S.G. MEHARE, J.)