

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.40 OF 2015  
WITH  
CRIMINAL APPLICATION NO.26 OF 2015

Suhail Ahmed Shafiq-Ur-Rehman  
Khan and Others ...Applicants  
vs.  
State of Maharashtra ...Respondent

Mr. Naveen Chomal, learned Advocate for the Applicants.  
Mrs. Geeta Mulekar, learned APP for the State.  
Mr. Sayed E.A. Naqvi, learned Advocate for the Intervener.

**CORAM** : P.D. KODE, J.

**DATE** : JANUARY 14, 2015

**P.C.**

. Heard.

2. The application for pre arrest bail in connection with C.R. No. 448 of 2014 registered with Kandivali police station, Mumbai for offences punishable under Sections 316, 354, 498-A, 324, 406, 467, 506 read with 34 of Indian Penal Code.

3. The crime in question was registered upon the F.I.R. lodged by the victim/daughter in law against her husband, his parents, elder brother of the husband, his wife and three daughters.

4. Without detailing the matters from F.I.R., it can be said that in short, it is the case of the first informant that she had married with applicant No.1 on 02-08-2009. It is her case that Streedhan valuing Rs. 7,82,900/- was given to her father in the marriage i.e. the articles mentioned in the F.I.R. The F.I.R. in detail gives various acts which according to the victim amounts to subjecting her to cruelty, primarily due to non receipt of dowry and demand of bringing Rs. 5 lacs from her father. It reveals that she was beaten with fist and blows by the persons detailed out in the F.I.R. The matters stated in further part of the F.I.R. pertains to herself being deceptively made to undergo an abortion without her consent. The

ultimate part of F.I.R. reveals that on the count of not fulfilling the demand, there was quarrel on 02-07-2014 and ultimately she was thrown out of the house on 03-07-2014 for bringing money from her father. Amongst others, it is also her case that the applicants had taken her signature on a paper for causing abortion without her consent. It is also her case that Streedhan kept by her with mother in law has been misappropriated. Upon the said F.I.R. crime has been registered against 11 persons of which applicants are Nos.1, 10 and 11.

5. The learned APP objected the prayer for pre arrest bail on the ground that police had yet to gather the name of Doctor at whose hospital the applicants were deceitfully compelled victim to abort without her consent. It is submitted that documents submitted that she has aborted at Piramal hospital are found to be incorrect after investigation, as the doctor of the said hospital has stated that she had not aborted in said

hospital. It is submitted that the allegations are of serious nature. *Prima facie* role of the applicants in commission of the acts are spelt out from the F.I.R. and as such grant of pre arrest bail will throttle the investigation at the initial stage.

6. The learned counsel for the applicants has submitted that the applicants have been falsely implicated in this case. It is their case that the victim has left the matrimonial house in the later part of year 2010 and thereafter efforts of mediation to bring her back had failed. It is submitted that there is a big difference in the financial status of both the families. The victim hails from a rich family and was unable to suit herself in the family of the applicants. Hence after separating and/or leaving the matrimonial house in the year 2010 now a false case has been engineered against the applicants for forcing the

applicant No.1 to leave his family and stay alongwith her separately.

7. The learned counsel for the applicants by drawing attention to the earlier complaint lodged by the first informant in the Court of Metropolitan Magistrate, Andheri and so also the intervention application filed on behalf of the victim in the Court of Session submitted that as per the complaint lodged before Metropolitan Magistrate, she has aborted at the house while in the F.I.R. false case is made out of herself aborted in the hospital. It is submitted that again story is changed in intervention application filed before the Court of Session to the effect of herself aborted at the house and her husband having disposed of a foetus by carrying in plastic bag. It is submitted that victim having aborted at the hospital is falsified by the certificate of Piramal hospital which reveals that a fetus was found to be

dead. It is urged that hardly there is any material to come to the conclusion that as alleged by the victim sex determination was effected.

8. After giving anxious consideration to the submissions advanced by both the parties and perusal of the application, it can be said that the learned counsel for the applicants except bringing to the notice of one N.C. complaint lodged with Tilak Nagar police station, has not pointed out anything to come to conclusion that the victim was not residing in the matrimonial house after year 2010 or that her claim that she was dragged out of her house in September, 2014 is false. Considering the said N.C. complaint also makes it difficult to accept the relevant submissions canvassed thereon since the investigation is in progress, in order to avoid causing of the prejudice to the either of the parties it is avoided to make a detail comment about the matters which is under investigation.

However, the perusal of the complaint lodged before the learned Metropolitan Magistrate, intervention application filed before the Court of Session and the F.I.R. makes it extremely difficult to accept that the victim has been changing her story as canvassed. Needless to add, merely because the precise place at which the abortion had taken place being not mentioned in F.I.R, it does not *prima facie* lead to the conclusion about her abortion being effected in the hospital as contended in the F.I.R is not correct. Even careful consideration, the matters stated in the intervention application in proper perspective, it is difficult to accept that there is variance as contended. It can be further added that the fact of applicant being aborted is not in dispute. The dispute appears to be the place at which she had aborted and the circumstances in which the abortion had taken place.

9. Having regard to it, the matters needs investigation. Having regard to it, the custodial interrogation of the applicant No.1 would be necessary for the said purpose as primarily the information furnished by him is found to be incorrect.

10. Now considering the role played by other two applicants, the F.I.R. itself reveals the decisive role played by them of giving the pills and statement made on said occasion. To ascertain their involvement, it is necessary to ascertain the circumstances in which they had given the pills to the victim. It is difficult to perceive that the said aspect can be investigated without the custodial interrogation of the applicants. It appears accordingly having due regard with their relationship with the applicant No.1.

11. The learned APP having made a statement that Streedhan is yet not recovered even for the

investigating the relevant aspect custodial interrogation of the applicant No.1 would be necessary.

12. Resultantly, there are no merits in the application for pre arrest bail. The allegations are not only of serious nature but *prima facie* some involvement of applicants. In such circumstances, grant of pre arrest bail would throttle the investigation at the inception. Resultantly, the application is rejected.

13. In view of the disposal of main application, the criminal application (for intervention) No.26 of 2015 apparently without base, the same also stands dismissed.

(P.D. KODE, J.)