

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 273 OF 2015

Vaibhav Dayaram Shirke. ... Applicant.
Versus
The State of Maharashtra. ... Respondent.

Mr. Kuldeep S. Patil, advocate for Applicant.

Mr. Arfan Sait, APP for State.

PSI Doke, Kalamboli Police Station.

CORAM : SMT.SADHANA S. JADHAV,J
DATE : MARCH 10, 2015

P.C.:

1 Heard the learned Counsel for the applicant and the learned APP for State. Perused papers of investigation.

2 This is an application under Section 438 of the Code of Criminal Procedure, 1973. The applicant herein is apprehending his arrest in Crime No. 193 of 2014 registered at Kalamboli Police Station for offence punishable under Section 498A, 406, 323, 504, 506 of the Indian Penal Code.

3 It is apparent on the face of the record that the applicant was married to the complainant on 6/1/2013. She resided in her matrimonial house at Kadsure for a period of 15 days. She was working as a police constable even prior to her marriage. 15 days after the marriage she joined her service at Kalamboli Police Station. It is alleged in the first information report that in February, 2013 the complainant had conceived pregnancy. The applicant had allegedly suspected the paternity and therefore, the complainant was forced to undergo medical termination of pregnancy at Dr. Dandekar Clinic.

4 It appears from the record that on 25/2/2013 she was given tablet for medical abortion. The MTP information consent form was signed by the complainant. The learned APP submits that the complainant had been coerced to undergo medical termination of pregnancy. Upon enquiry made by this Court, the learned APP has fairly submitted that the complainant had not disclosed to the doctor in privy also that she is not giving consent to the medical termination

of pregnancy voluntarily. The medical papers do not show signature of the present applicant.

5 On 13/3/2014 the complainant had issued a legal notice to the applicant. In the said notice, the applicant was directed to file his reply within 8 days or else she would take steps for seeking divorce. It is pertinent to note that in the said notice it has been specifically stated that being fed up with the ill-treatment meted out to her at the hands of the applicant, she had withdrawn herself from the matrimonial house on 2/2/2014. In the first information report also it is stated that she had lodged a report at the police station and thereafter, N.C. No. 91 of 2014 was registered and it is admitted that she had started residing with her parents since 2/2/2014. She has stated that she had joined the company of her husband subsequently. However, no specific date has been mentioned except saying that on 3/8/2014 her father-in-law had died. It is alleged that after August, 2014 the applicant was insisting upon her that the room which was purchased for her mother should be transferred in his name.

6 According to the complainant, on 12/9/2014 she had been abused and assaulted by the applicant. She reported the same to Kalamboli Police Station and N.C. No. 760 of 2014 was registered. On 30/11/2014 the applicant is alleged to have left the house. She had requested him to cohabit with her. It is alleged that the applicant had carried with him the golden ornaments which were gifted to her at the time of her marriage. As against this, the learned Counsel for the applicant submits that in the reply to the notice which was issued to the applicant, the applicant had specifically contended that when she left the house on 2/2/2014 she had carried her ornaments alongwith her and therefore, according to the learned Counsel, there is no question of recovering the said ornaments or the offence punishable under Section 406 of the Indian Penal Code.

7 Be that as it may, the present prosecution is for an offence punishable under Section 498A, 406 of the Indian Penal Code. This Court is guided by the guidelines issued by the Hon'ble Apex Court in

the case of **Arnesh Kumar v/s. State of Bihar (2014) 8 SCC 273**. and hence, this Court holds that custodial interrogation would not be imperative for the purpose of recovery of stridhan. Moreso, the issue in question is disputed. The applicant claims that the complainant had taken away golden ornaments alongwith her on 2/2/2014 whereas according to the complainant the applicant had carried away the ornaments on 30/11/2014 after he had deserted her. In view of this, the order passed by this Court on 25/2/2015 needs to be confirmed. However, this Court is inclined to direct the applicant to report to the concerned police station.

8 The observations made hereinabove are prima facie in nature. The same shall not be considered while deciding application for discharge or quashing of FIR or at the time of trial.

9 Hence, following order is passed :

ORDER

(i) The application is allowed.

(ii) In the event of arrest in Crime No. 193 of 2014 registered at Kalamboli Police Station, the applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 15,000/- and one or two sureties in the like amount.

(iii) The applicant shall report Kalamboli Police Station on 13th, 14th, 15th and 16th March, 2015 between 10 a.m. and 12 noon and cooperate with the Investigating agency to the best of his capacity. The Investigating Officer shall record voluntary statement of the applicant without being influenced by the fact that the complainant was/is a colleague of the concerned Investigating Officer. It is further made clear that the complainant shall not remain present at Kalamboli Police Station at the time when the applicant attends the police station.

10 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)