

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 386 OF 2015

Himanshu Pravin Kapadia

.....Applicant

V/s.

The State of Maharashtra

....Respondent

Mr. Yashpal Thakur a/w Ms. Neeta Parikh Advocate for for Applicant
Ms. Jindagi Shah a/w Mr. Sunil Vyas for Respondent no. 2
Mr. Y. M. Nakhwa APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : 25th JUNE 2015

PC :

1) Heard. This is an application under section 438 of Code of Criminal Procedure, 1973. Applicant herein is apprehending his arrest in crime no. 77 of 2015 registered at Kandivali Police Station for offence punishable under section 498 (A), 420, 406, 328, 504, 506 (II) of Indian Penal Code.

2) It is the case of prosecution that on 16/02/2015, wife of applicant lodged a report at Kandivali Police Station alleging therein that she had married to the applicant on 07/02/2013. It is alleged that prior to the marriage, applicant had misrepresented to the complainant about his financial position,

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his service and other background. She is not allowed to practice her religion. However, according to complainant, her in-laws had forced her to profess certain rituals as per the religion of applicant. There are allegations against other members of matrimonial family. Complainant has also alleged that she was subjected to cruelty and ill-treatment at the hands of the applicant. She has narrated several incidents and the manner in which she was ill-treated at the hands of present applicant. It is also alleged that applicant was addicted to alcohol. Another incident narrated by complainant is that one day he had offered her milk and under the garb of mixing Bournvita with the milk, he had added some spurious substance and hence allegation for the offence under section 328 of Indian Penal Code. On 07/08/2014, parents of the complainant had requested the applicant to accompany the complainant to her maternal house on the occasion of Raksha Bandhan as her paternal aunt had visited the house after a long time. Applicant had taken her to the house of her parents and thereafter, she had never returned to her matrimonial home. Complainant has specifically alleged that on the day of Raksha Bandhan applicant had abused the complainant and thereafter, in the afternoon at about 1.00 p.m., informed her that it is not necessary for her to return to her matrimonial home.

3) A discordant note had struck between the couple thereafter and finally she was constrained to lodge a report against the applicant and the other accused persons. Complainant has specifically alleged that applicant and his family members had retained her Streedhan and other valuables and had not returned the same to her. In the course of investigation in this case, applicant had returned most of the articles of the complainant. They were returned by the police vide panchanama. Thereafter, complainant had filed an application under section 451 of Code of Criminal Procedure, 1973 seeking return of property. Applicant had given no objection to hand over the seized property in favour of complainant and accordingly on 20/06/2015, learned Metropolitan Magistrate, 17th Court, Borivali Mumbai has returned the property to the original complainant by way of interim custody on her executing indemnity bond of Rs. 4,30,000/-.

4) Upon perusal of F.I.R. and other papers of investigation, it prima facie appears offence is an outcome of matrimonial dispute. Custodial interrogation in such cases would not be imperative in view of the Judgment of Hon'ble Apex Court in the case of **Arnesh Kumar v/s State of Bihar (2014) 8 SCC 273**. Hence, this Court is inclined to grant pre-arrest bail in favour of

applicant. It is made clear that observations or grant of pre-arrest bail shall not be considered in the application seeking quashing of F.I.R., discharge application or at the time of trial.

ORDER

- (i) Application is allowed.
- (ii) In the event of arrest, applicant be enlarged on bail on furnishing P. R. bond in the sum of Rs. 25,000/- with one or two sureties in the like amount.
- (iii) Applicant shall report to the concerned police station as and when called.
- (iv) Applicant shall not leave India without permission of the Court.
- (v) Application stands disposed of.

(SMT. SADHANA S. JADHAV, J.)