

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 547 OF 2015

Suraj Umashankar Singh. ... Applicant.
Versus
The State of Maharashtra & anr. ... Respondents.

Mr. Subhash Jha i/b. Mr. Manish M. Dubey, advocate for Applicant.

Mr. A.K. Singh i/b. D.S. Law, advocate for respondent No. 2.

Mr. Y.M. Nakhwa, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J
DATE : JULY 7, 2015

P.C.:

1 Heard the learned Counsel for the applicant, the learned Counsel for the respondent No. 2 and the learned APP for State.

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. 107 of 2015 registered at Sakinaka Police Station on 9th March, 2015 for offence punishable under Section 498A, 406 read with Section 34 of the Indian Penal Code.

3 It is the case of the prosecution that on 9th March, 2015 wife of the present applicant lodged a report at the police station alleging therein that on 31/1/2015 she had given a written report to the Assistant Commissioner of Police, Saki Naka Division in respect of the ill-treatment meted out to her at the hands of her husband and his family members. She was called to the police station on 9th March, 2015 where she confirmed that the complaint dated 31/1/2015 was rather signed by her. Her statement was recorded by the police. She has submitted that she got married to the present applicant on 20/6/2010. At the time of marriage, her parents had given dowry of Rs. 5 Lakhs and had also given her valuable articles as well as household items such as washing machine and other articles. It is alleged by her that after one month of the marriage, she was meted with cruelty and ill-treatment on the ground that the members of her matrimonial family were not honoured properly at the time of marriage and also that the parents of the complainant had not given her items such as cupboard, T.V., Sofa set etc. She had told the members of the matrimonial family that in view of all those articles,

her father has given Rs. 5 Lakhs. However, ill-treatment continued. She wanted to save her family and therefore, did not report about it to anybody.

4 In 2011, the couple was blessed with a male child who is named as Anirudha. The members of her matrimonial family were ill-treating her on account of demand of Rs. 10 Lakhs. Physical and mental ill-treatment is meted out to her to such an extent that she was constrained to approach police station and lodge report. Lodging of the report did not act as a deterrent factor. On the basis of her report dated 20/8/2014 N.C. No. 2885 of 2014 was registered. On her report dated 1st October, 2014 N.C. No. 3225/2014 was registered. On the basis of her report dated 9/10/2014, N.C. No. 3339 of 2014 was registered. On the basis of her report dated 26/10/2014 N.C. No. 3622/14 was registered at Saki Naka Police Station.

5 On 28/10/2014 she had been to the house of the relative for performing chhat pooja. She returned home on the next day. She was refused ingress into her matrimonial house and she was warned that she would not be allowed to stay in the said house till she fetched the said Rs. 10 Lakhs. On 1st November, 2014 her husband filed divorce petition in the Family Court at Bandra, which is registered as Petition No. 2627 of 2014.

6 It is pertinent to note that it is averred in the first information report that her husband had illicit relations with a girl residing in close proximity for the past 2 years. Upon hearing from her neighbours and others, she had enquired about the same and on that day, she was assaulted by her husband with fists and kick blows. On 8/1/2015 her husband had left in the company of the said girl who happens to be 18 years old and her parents had lodged a missing report about the same which was registered as 5 of 2015. On the basis of her report, Crime No. 107 of 2015.

7 The learned Counsel for the applicant vehemently submits that taking into consideration the nature of allegations made in the FIR, in fact, no offence could have been registered. According to the learned Counsel, the allegations are vague and omnibus in nature. It is further urged that the first information report is lodged only as a counter blast to the divorce petition filed by the applicant. It is also submitted that an attempt is made to rope in all the members of the family. That the allegations are so vague that no specific date has been stated in the FIR as to when the victim was assaulted, abused etc.. No specific incident or overt act is attributed to anybody, much less, the present applicant. That the allegations are omnibus in nature. That there was no complaint filed by the complainant for the first 4 years after marriage and for the first time, she has lodged report at the police station only as a counter blast to the divorce petition.

8 As against this, the learned Counsel for the Respondent No. 2/original complainant submits that in fact, the complainant was

making all efforts to save the family, more so, in the interest of the son. It is further submitted that after lodging of the reports, on the basis of which non-cognisable cases are registered, the applicant was called to the police station and the police had made every efforts to pacify the relations. However, the applicant has refused to mend his ways. Intermittent incidents are reported to the police station. The police had only filed non-cognisable offences and that cannot be ignored that inspite of approaching the police station on more than 4 occasions, she was being ill-treated and harassed in her matrimonial house. It is pertinent to note that the submission of the learned Counsel that the offence could not have been registered in the manner in which it is done, does not stand any test for reason. In fact, the complainant had written a letter to the Assistant Commissioner of police on 31/1/2015 and pursuant to the said letter she was called to the police station. Her statement was recorded and thereafter, offence has been registered. The manner of registration of an offence also cannot be challenged because there were earlier four non-cognisable cases, which are registered.

9 The learned APP has submitted that the applicant is an accused in Crime No. 124 of 2015, which is registered against him for offence punishable under Section 376 of the Indian Penal Code. Prosecutrix in the said case is the same girl whose identity is disclosed in the first information report filed by the wife of the applicant.

10 Perused the report filed by the prosecutrix in Crime No. 124 of 2015 where she has specifically alleged that the applicant had initially ravished her against her wishes and thereafter, he had taken undue advantage of her and had ravished her on several occasions. He had taken her to his house in February, 2014 and had disclosed to his parents that he intends to marry her. The said prosecutrix was visiting to his house quite often. On one occasion, she met his wife and at that time for the first time she learnt that he was a married man and that he was a father of a son. It is further urged in the said FIR that the applicant had informed the prosecutrix that he has filed divorce petition against his wife and that once the divorce is granted, he would marry her or that he would marry her after she completes

her age of 19 years. It is specifically urged that she would complete the age of 18 years in January, 2015. This by itself would show that she was a minor on the date when she was ravished by the present applicant. In the said FIR the provisions of Prevention of Children from Sexual Offences Act, 2012(POCSO) had not been added, although the recitals of the FIR show that the applicant had committed an offence punishable under the provisions of POCSO. The learned Counsel for the applicant submits that in the said case he has been enlarged on bail.

11 Perused the order granting bail to the applicant. The learned Sessions Judge has observed that an offence under Section 376 of the Indian Penal Code is not made out, since it prima facie appears that it is a case of consensual sex. In all probabilities, the recitals of the FIR were not read in its proper perspective.

12 Be that as it may, the learned counsel for the applicant has further submitted that it would be necessary to refer the parties for

mediation in order to save the family. This Court has asked the learned Counsel for the respondent No. 2/complainant. Learned Counsel for the respondent No. 2/complainant upon instructions from the complainant who is present in the court has specifically answered in the negative on the ground that the complainant also apprehends danger to her life. She has filed proceedings under the provisions of the Domestic Violence Act before the Metropolitan Magistrate.

13 It is true that in the case of **Arnesh Kumar v/s State of Bihar (2014) 8 SCC 273**, the Hon'ble Apex Court has held that in the matters where the offences are registered under Section 498A of the Indian Indian Penal Code, custodial interrogation of the accused would not be imperative since the registration of the offence is an outcome of the matrimonial dispute. However, it was the intention of the legislature that the offence under Section 498A of the Indian Penal Code be treated as non-bailable offence. It was for the purpose of giving protection to women and that it would be a deterrent factor to the members of the matrimonial family. However, the present case

would a exception as the grant of bail has to be considered in the facts and circumstances of each case. In the present case, the complainant had approached the police station on more than 4 occasion and reported to the police station about the ill-treatment meted out to her at the hands of her husband and members of the matrimonial. Her husband is an accused under Section 376 of the Indian Penal Code where in all probabilities provisions of Prevention of Children from Sexual Offences Act, 2012 would also be attracted. In such circumstances, it cannot be held that the case is made out for grant of pre-arrest bail.

14 In view of the above observations and submissions advanced across the bar, the applicant does not deserve grant of pre-arrest bail. The application being sands merit stands rejected and disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)