

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 550 OF 2015

Raskin Pinakin Engineer

.....Applicant

V/s.

The State of Maharashtra

....Respondent

Mr. S. R. Borulkar i/b Mr. Manoj S. Mhambrey for Applicant
Mr. Y. P. Gandhi for complainant
Ms. Rutuja Ambekar APP for the State.
Mr. Kadam, A.P.I. Kandivali Police Station

CORAM : SMT. SADHANA S. JADHAV, J.
DATED : AUGUST 11, 2015.

PC :

Heard. This is an application under section 438 of Code of Criminal Procedure, 1973. Applicant herein is apprehending his arrest in crime no. 129 of 2015 registered at Kandivali Police Station for offence punishable under sections 498 (A), 406, 420, 504, 506, 290, 323 r/w 34 of Indian Penal Code and section 3 & 4 of Dowry Prohibition Act.

2) It is the case of prosecution that on 26/03/2015, wife of present applicant lodged a report at the police station alleging therein that she got married to the applicant on 20/02/2007. Couple is blessed with a son on

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24/08/2008. It is alleged that after complainant had delivered the child, for the first time, she learnt that applicant is addicted to alcohol and that he has illicit relations with another woman. That thereafter, it is alleged that applicant had started abusing, ill-treating and assaulting the complainant on various accounts. She had also learnt that he is addicted to drugs. That under the influence of drugs, he used to remain sleeping in the house for about 2 days. Complainant has also named other women who had illicit relations with present applicant. She had made efforts to verify about the said relationship. It is alleged that complainant was being ill-treated by applicant and his parents on account of demand of Rs. 20 to 25 lacs. That she was being coerced to fetch the amount from her parents. She had informed her parents about the same.

3) Complainant has also alleged that in the year 2009, when she was carrying the pregnancy of more than 17 weeks, she was being coerced to go through the medical termination of pregnancy. In the F.I.R., various instances and details of ill-treatment and harassment meted out to the complainant are narrated. It is further alleged that on 24/12/2013, complainant had to walk out of her matrimonial house under the given circumstances. That she is residing

with her parents since 24/12/2013. She had also reliably learnt that present applicant is residing with other woman. It is also alleged that applicant and his parents were not looking after the complainant and her child. That she was constrained to file a petition under the Protection of Women from Domestic Violence Act, 2005. It is also alleged that ornaments given by the parents of the complainant as well as her Streedhan has not been returned by the applicant and his parents. On the basis of the said report, crime no. 129 of 2015 registered at Kandivali Police Station for offence punishable under sections 498 (A), 406, 420, 504, 506, 290, 323 r/w 34 of Indian Penal Code and section 3 & 4 of Dowry Prohibition Act against applicant and others.

4) Learned counsel for the complainant has fairly submitted that complainant has initiated proceedings under Protection of Women from Domestic Violence Act, 2005 which is registered as Petition No. 68 of 2013 and is pending before 12th Court, Bandra. Learned Court has been pleased to grant maintenance in favour of complainant which is under challenge. That complainant has filed divorce proceedings under section 13 (1) (1A) of Hindu Marriage Act. That applicant has filed a petition seeking access to their minor child.

5) Learned counsel for the applicant submits that complainant had withdrawn herself from the matrimonial house way back in 2013⁴. That there is litigation pending between the parties since 2013 in as much as complainant has filed divorce petition in the year 2013 and therefore, initiation of criminal prosecution under section 498 (A) at a belated stage i.e. in the year 2015 would lose its significance and that it has been used as a tool of coercion.

6) Learned APP has placed on record the transcript of cellphone conversation dated 13/02/2015 at about 5.15 p.m. between the complainant and present applicant. It appears that applicant was threatening her of dire consequences and was stating that he would take out money from the father of complainant. It is pertinent to note that even after registration of the offence and other pending litigations, applicant is showing audacity to demand money. It also shows that applicant had informed the complainant that the lawyer engaged by her is in close communication with him and that he has connections "Inside". Learned APP has serious objections. She submits that this would show that the applicant has no respect and faith in the courts of justice and therefore, he does not deserve bail.

7) As against this, learned counsel for the applicant submits that this was the conversation where complainant had led him to speak things. It was in respect of some civil court proceedings and all that he wanted to apprise her was of the fact that her lawyer is also in contact with the lawyer representing the applicant and therefore, she shall not have faith in him. All these are disputed facts which need not be considered while considering the application under section 438 of Code of Criminal Procedure, 1973 as it is word against word.

8) Taking into consideration the rival contentions, this Court had also taken efforts to see that there is some mediation between the parties. Learned Advocate and Mediator Ms. Anita Trivedi was appointed as Mediator. By a report dated 22/07/2015, Advocate/Mediator Ms. Anita Trivedi has reported that mediation has failed. Mediation report is taken on record and marked as article 'X' for the purpose of identification. Initiation of criminal prosecution in the present case is an outcome of a matrimonial dispute. Parties are litigating before various other courts i.e. before Family Court as well as before learned Magistrate in Domestic Violence Proceedings and hence, in the present case, this Court would be guided by the guidelines laid by Hon'ble

Apex Court in the case of **Arnesh Kumar v/s. State of Bihar (2014) 8 SCC 273** wherein Hon'ble Apex Court has observed:

“Arrest brings humiliation, curtails freedom and cast scars forever. Law makers know it so also the police. There is a battle between the law makers and the police and it seems that police has not learnt its lesson; the lesson implicit and embodied in the Code of Criminal Procedure. It has not come out of its colonial image despite six decades of independence, it is largely considered as a tool of harassment, oppression and surely not considered a friend of public. The need for caution in exercising the drastic power of arrest has been emphasized time and again by Courts but has not yielded desired result. Power to arrest greatly contributes to its arrogance so also the failure of the Magistracy to check it. Not only this, the power of arrest is one of the lucrative sources of police corruption. The attitude to arrest first and then proceed with the rest is despicable. It has become a handy tool to the police officers who lack sensitivity or act with oblique motive.”

9) This Court is of the opinion that custodial interrogation of the applicant would not be imperative. Hence, following order.

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. 50,000/- with one or more solvent sureties in the like amount.
- (iii) Applicant shall report to concerned police station from 17/08/2015 to 20/08/2015 between 10.00 a.m. to 1.00 p.m. and co-operate with investigating agency to the best of his capacity.
- (iv) Investigating Officer shall record the statement of applicant. Applicant shall not leave India without prior permission of the Court.
- (v) Application stands disposed of.

(SMT. SADHANA S. JADHAV, J.)