

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 735 OF 2015

Mr. Amit s/o. Tilok Agarwal. ... Applicant.

Versus

The State of Maharashtra & anr. ... Respondents.

Mr. Anand Mishra a/w. Ms. Sneha Singh i/b. Mr. A.M. Saraogi,
advocate for Applicant.

Mr. A.K. Maheshwar, advocate for complainant.

Ms. S.S. Kaushik, APP for State.

Mr. B. Ghadge, PSI, Santacruz Police Station.

CORAM : SMT. SADHANA S. JADHAV,J

DATE : JUNE 23, 2015

P.C.:

1 Heard the learned Counsel for the applicant and the learned
APP for State.

2 This is an application under Section 438 of the Code of Criminal Procedure, 1973. The applicant is apprehending his arrest in crime No. 217 of 2015 registered at Santacruz Police Station on 23/4/2015 for offence punishable under Section 420, 498A, 269, 270, 406 read with section 34 of the Indian Penal Code.

3 It is the case of the prosecution that on 23rd April, 2015 wife of the applicant lodged a report at the police station that she is married to the applicant on 8th February 2014. In the FIR she has narrated several instances wherein she was subjected to harassment, cruelty and ill-treatment at the hands of the present applicant and his family members. It is also alleged that there was demand of dowry on several occasions. That her parents had gifted her several articles, jewellery and other valuable at the time of marriage. She was physically assaulted by the applicant and his family members. One of the serious allegation against the present applicant is that he had been suffering from STD almost 10 years prior to the marriage, as was disclosed to the complainant by the applicant himself. According to

the complainant, she had also started suffering because of the transmitted ailment. That her mother-in-law had asked her to take medicine. She had feared of transmission of the said ailment to her. In May, 2015 she had also got admitted in the hospital of Dr. Seth for being treated for STD. According to her, it was presumed that due to medication, the present applicant was cured. However, it is submission of the learned Counsel for the applicant that recurrence of the disease cannot be ruled out, although temporarily, it may appear that he has recovered. The complainant has alleged that she was not informed by the applicant or his family members before settlement of marriage that the applicant is suffering from STD. This issue has been disputed by the learned Counsel for the applicant.

4 The applicant had filed an application under Section 438 of the Code of Criminal Procedure, 1973 before the Sessions Court. During the pendency of the said application, the Investigating Officer had suffered from heart attack and therefore, she was admitted in the hospital and the applicant could not be taken to the hospital for the

said test. Apart from this, the report of the Investigating Officer shows that before the Sessions Court, it was agreed that the applicant would give Rs. 20 Lakhs within four weeks to the complainant. The Investigating Officer had opened the locker of the applicant and has taken the golden jewellery into custody. The said golden jewellery has been verified as stri dhan of the present complainant. The Investigating Officer had also seized the accounts of the applicant since it was informed that amount is given to the applicant towards dowry. The jewellery and other articles of the complainant is in the custody of the police as on today. The complainant has filed an application seeking return of property u/s 451 Cr. P.C. The said application is pending. Since the articles are not disputed by the applicant and they happen to be stri dhan of the complainant, it is obvious that the Magistrate would allow the said application.

5 Since the Investigating Officer is hospitalised, the applicant could not give attendance before the Investigating Officer and there has been no effective investigation. The applicant will report to the

police station on 2nd, 3rd and 4th July, 2015 and the Investigating Officer shall take him to J.J. Hospital. The learned Counsel for the applicant upon instructions undertakes to take alongwith him all the past medical records and get himself examined for necessary test.

6 Today in the course of hearing of the application, the learned Counsel for the applicant upon instructions submits that he would give an undertaking to this Court that he would pay Rs. 20 Lakhs to the complainant within 12 weeks and shall not pray for any extension of time. The applicant shall give an undertaking to this Court on or before 26/6/2015 and the said undertaking will be taken on record and included in the compilation of the present application.

7 It is abundantly clear that the offence registered against the applicant is an outcome of matrimonial dispute. Custodial interrogation would not be imperative. Hence, the applicant deserves grant of pre-arrest bail.

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

9 Hence, the following order :

ORDER

- (i) The application is allowed.
- (ii) In the event of arrest, the applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 50,000/- and one or two sureties in the like amount.
- (iii) The applicant shall report to the concerned police station on 2nd, 3rd and 4th July, 2015 and cooperate with the investigating agency by subjecting himself to the necessary medical tests. It is also made clear that in the eventuality any further tests are required for diagnosing the disease, the applicant shall cooperate with the investigating agency accordingly.

(iv) The applicant shall give an undertaking to this Court by 26/6/2015.

10 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)