

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 738 OF 2015

Mr. Prateek Pawan Kedia	...	Applicant
vs.		
The State of Maharashtra	...	Respondent

Mr. A.H.H.Ponda i/b. Ms. Seema Singh, Advocate, for the applicant.
Ms. P.P.Shinde, APP, for the State.
Mr. A.M.Saraogi, for the complainant.

CORAM: SMT.SADHANA S.JADHAV,J.
DATE : 27th July, 2015.

P.C.

Heard. This is an application under Section 438 of Cr.P.C.
The applicant herein is apprehending his arrest in Crime No.199 of 2015 registered at Malad Police Station for the offences punishable under Sections 498A, 406, 323, 506, 420, 504 read with Section 34 of IPC.

2. It appears from the records that the marriage of the applicant with the complainant was solemnized on 28.2.2008. There is no issue born from the said wedlock. A discordant note had been struck between the couple and hence the applicant herein had filed a Petition under Section 13(1)(ia) of the Hindu Marriage Act in the Family Court, Bandra on

28.1.2015. A specific averment was made in the said petition that the family of the applicant as well as the applicant felt that the applicant was cheated since the complainant was not keeping well and the applicant apprehended that the complainant and her family members had suppressed the medical condition of the complainant. The applicant had made a specific averment that on 12.9.2014, the father of the complainant had visited their house and had taken back the complainant with him. It is also averred that the complainant had left the matrimonial house along with all her belongings and only her wearing apparels were left in her matrimonial home. According to the applicant, there was no communication between both the families at least till 28.12.2014 when the relatives of the complainant had been to the house of the applicant and had raised quarrels. The applicant had filed a complaint to the police station which was registered as non-cognizable case.

3. On 1.2.2015, the wife of the applicant had filed a written complaint to the Senior Inspector of Police, Malad Police Station, against the present applicant and his family members. It was specifically alleged that the family of the complainant had given valuable articles/ornaments to the applicant and his family members upon there being specified demands.

A list of articles has been given in the said complaint. According to the complainant, the family of the applicant had also given her valuable articles/ornaments. It is stated in the complaint that on 3.3.2008, when the applicant and the complainant were leaving for Shimla and Manali, mother-in-law i.e. mother of the applicant had taken all the valuable articles and ornaments from the complainant and kept in safe custody. It is averred specifically that the complainant was confined to a room and was not permitted to contact anybody much less use the cellphone or landline phones. She has narrated various instances of harassment and ill-treatment at the hands of the applicant and his family members.

4. On 11.4.2015m, the wife of the applicant lodge a report at the Malad Police Station alleging therein that she had been harassed and ill-treated since 20.2.2008 till 28.12.2014. The applicant is being prosecuted for the offences punishable under Sections 498A, 406, 323, 506, 420, 504 read with Section 34 of IPC. In the FIR, the complainant has given a list of articles and valuables given to the applicaton before marriage, at the time of marriage and thereafter.

5. The learned counsel for the complainant submits that the

custody of the applicant is necessary for recovering the valuables and the articles gifted to the complainant. According to the learned counsel, it is the Stridhan and she is entitled to receive the said articles.

6. As against this, the learned counsel for the applicant submits that in the first FIR, most of the articles mentioned in the report date 11.4.2015 are not mentioned. It is further submitted that there is no question of confining the complainant. She was permitted to appear for her C.S. Examination after marriage. He has placed on record the Hall Ticket which would show that the complainant had passed one group even after the marriage. It is further submitted that in the petition filed before the Family Court itself the applicant had made a specific averment that on 12.9.2014, the father of the complainant had been to his house and has taken away all the valuables. The said issues are disputed issues and can be settled before the Family Court. The registration of the offence in the present case is the outcome of the matrimonial dispute.

7. This Court is directed by the observations and the directions laid down by the Hon'ble Apex Court in the case of **Arnesh Kumar vs. State of Bihar reported in (2014) 8 SCC 273**. The Hon'ble Apex Court has observed as follows :-

“The institution of marriage is greatly revered in this country. Section 498-A of the IPC was introduced with avowed object to combat the menace of harassment to a woman at the hands of her husband and his relatives. The fact that Section 498-A is a cognizable and non-bailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives. The simplest way to harass is to get the husband and his relatives arrested under this provision.”

“Our endeavour in this judgment is to ensure that police officers do not arrest accused unnecessarily and Magistrate do not authorise detention casually and mechanically. In order to ensure what we have observed above, we give the following direction :

(1) All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A of the IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41, Cr.P.C.”

Hence, this Court is of the opinion that custodial interrogation of the applicant is not imperative.

8. It is made clear that the observations made hereinabove are restricted to deciding the application under Section 438 of Cr.P.C. and shall not be considered for the purpose of quashing of FIR, discharge application at the time of trial or before the Family Court. The said issues in respect of the Stridhan of the complainant was taken into consideration by the Family Court at the appropriate stage.

ORDER

- (i) The application is allowed.
- (ii) In the event of his arrest, the 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) The applicant shall report to the concerned police station as and when called.

Application stands disposed of.

(SMT.SADHANA S.JADHAV, J.)