

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 1120 OF 2015

Mr. Sohil Ahmed Shafiqur Raheman Khan.	Applicant
vs.	
The State of Maharashtra	Respondent

Mr. Amin Solkar, Advocate, for the applicant.
Mr. Y.M.Nakhwa, APP, for the State

CORAM: SMT.SADHANA S.JADHAV,J.
DATE : 2nd July, 2015.

P.C.

Heard. This is an application under Section 439 of Cr.P.C.

The applicant herein is arrested on 7.5.2015 in Crime No.448/2014 registered at Kandivli Police Station for the offences punishable under Sections 316, 498A, 354, 324, 406, 467, 506 read with Section 34 of IPC.

2. It appears from the recitals of the FIR that on 20.12.2014, the wife of the present applicant lodged a report at the police station that she is married to the present applicant on 2.8.2009. At the time of marriage, she was gifted with valuables in the form of ornaments and clothes and other consumer items. According to her, she was met with cruelty and ill-

treatment in her matrimonial house. She has alleged that she had conceived pregnancy. There was a persistent demand from the members of her matrimonial family to fetch Rs.5 lakhs and other items from her parents and she was being coerced for the same. After it was learnt that she had conceived pregnancy, she was forcibly taken to a hospital for sex determination of the fetus. According to her, the members of her matrimonial family had learnt that it is the female foetus and, therefore, she was assaulted by the family members in such a manner that the foetus should be aborted. That when she was having headache, she was administered with some medicine on 23.2.2009. She was taken to a nearby hospital. Her signatures were obtained on blank papers. She was made unconscious and thereafter the foetus was aborted. Since they had obtained the signatures on blank papers, an impression was created that she had voluntarily medically terminated the pregnancy.

3. It is pertinent to note that in this case, the prosecution has arraigned Sadiya, the niece of the present applicant. Her name has been mentioned in the FIR and the act attributed to her is that she along with Sadika and Soliya had administered tablets to her. It is further pertinent to note that the incident is of the year 2009 and at that time, Sadiya was hardly 16 years old. The first informant has stated that Sadiya is the daughter of

her brother-in-law. It is unfortunate that in offences registered under Section 498A of IPC, future of the minors is also ruined only because there are omnibus allegations against them. In this case, Anticipatory Bail Applications of the present applicant as well as Sadia and Solia were rejected right upto the Hon'ble Apex Court and thereafter, the present applicant had surrendered before the Magistrate on 7.5.2015.

4. In the course of hearing of this application, this Court had noticed that similarly placed accused i.e. Sadika and Sadiya had also approached the Hon'ble Apex Court and their applications seeking pre-arrest bail were rejected by the Hon'ble Apex Court. In view of this, this Court had made it clear that the application of the present applicant would be heard only after the absconding accused present themselves before the Court of Magistrate.

5. The learned counsel for the applicant has submitted that Solia and Sadika have surrendered before the Magistrate on 30.6.2015. At that time, it was revealed that Sadiya was a juvenile in conflict with law at the time when the incident had occurred i.e. 2009 and today she has attained majority. In view of this, the Investigating Officer was pleased to produce Sadia before the Juvenile Court and has been enlarged on bail. This Court (Coram Smt. Revati Mohite Dere, J.) in **Cri. Bail Application No. 161 of**

2015, (Shivram Dayaram Nishad & Anr. vs. The State of Maharashtra),

had made serious observations about minors being implicated in offences punishable under Section 498A of IPC. The observations are as under :-

*“In fact, the statement of the School Authorities shows that the juvenile accused aged 13 years i.e. the sister-in-law of the complainant was present at the school at the time of the alleged incident. However, despite the said material on record, the police have callously without applying their mind, produced the juvenile accused before the Juvenile Court and have initiated the proceedings against the juvenile accused, by filing a charge-sheet against her, only on the basis of the complainant's statements, ignoring the over-whelming material on record, which is to the contrary. In cases like this, police must examine the material before filing the charge-sheet, more particularly, where the entire family is implicated, including a juvenile girl i.e. sister-in law of 13 years, and applicant No.2 i.e. brother-in-law, who is 19 years of age. The impact of a prosecution and arrest can never be compensated, and the indelible life long scars can never be erased. This is the 2nd case, that I have come across where a juvenile was involved in a 498A case. In that case, the boy who was the brother-in-law of the complainant, was chided by his teacher for the registration of the offence, resulting in him losing one academic year. The boy was to appear for Standard 10th exam, but could not. The Apex Court in **Arnesh Kumar v. State of Bihar & Anr. 2014 (8) SCC 273** has observed, that due to rampant misuse of Section 498-A and Dowry Prohibition Act, it would be prudent and wise for a Police Officer, not to arrest without reasonable satisfaction, which is reached after some investigation. Unfortunately, despite overwhelming material to the contrary, to show that some of the co-accused were not even present, charge-sheet has been filed against all.”*

6. In view of this, the learned APP is directed to file a report/affidavit of the Investigating Officer as to why the minor was arraigned as an accused in the present case. The application is kept

pending. However, the applicant deserves to be enlarged on bail since he is in custody since 7.5.2015.

ORDER

- (i) The application is allowed.
- (ii) The applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs.15,000/- with one or two sureties in the like amount.
- (iii) The applicant is enlarged on provisional cash bail of Rs.15,000/- which shall remain in force for a period of four weeks. During this period, the applicant shall complete all the formalities of furnishing P.R.Bond.
- (iv) The applicant shall report to the concerned police station as and when called.

S.O. to 16.7.2015.

(SMT.SADHANA S.JADHAV, J.)