IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 1195 OF 2015

Sukhvinder Kaur Alias Radhe Maa ...Applicant
Versus
Inspector of Police & Anr. ...Respondents

WITH
CRIMINAL APPLICATION NO. 802 OF 2015
IN
ANTICIPATORY BAIL APPLICATION NO. 1195 OF 2015

Niki Nakul Gupta ...Intervener

IN THE MATTER BETWEEN :

Sukhvinder Kaur Alias Radhe Maa ...Applicant
Versus
Inspector of Police & Anr. ...Respondents

Mr. A. H. H. Ponda with Mr. Subodh Desai I/b Mr. G. B. Kedia for the Applicant

Mr. S. S. Pednekar, A.P.P for the Respondent-State

Mr. G. S. Kulkarni I/b Mr. M. G. Shukla for the Intervener in APPP/802/15

CORAM : REVATI MOHITE DERE, J.
THURSDAY, 8th OCTOBER, 2015

P.C. :

1. Heard learned Counsel for the applicant, the learned A.P.P for the State and the learned Counsel for the intervener.

2. By this application, the applicant seeks her enlargement on bail in connection with C.R. No. 260 of 2015 registered with the Kandivali Police Station, for the alleged offences punishable under Sections 323, 420, 406, 498-A, 506(II), 114, 120(B) r/w 34 of the Indian Penal Code as well as under Section 3 and 4 of the Dowry Prohibition Act.

3. The first informant Niki Gupta has lodged a private complaint in the Court of the learned Metropolitan Magistrate, 17th Court, Borivali, Mumbai, being Case No. 222/SW/2015 as against seven persons, including the present applicant. In the said private complaint, respondent No.1 is the husband; respondent No. 2 the father-in-law; respondent No. 3 the mother-in-law; respondent No.4 the brother-in-law; respondent No. 5 the sister-in-law; respondent No. 6 the paternal uncle of the complainant and the present applicant – Sukhvinder Kaur @ Radhe Maa is shown as respondent No. 7. The respondent No. 7 is admittedly not a relative of respondent Nos. 1 to 5 but is stated to be their spiritual guru.

4. Pursuant to the said private complaint, which was lodged on 28th May, 2015, the learned Metropolitan Magistrate, Mumbai, was pleased

to pass an order under Section 156(3) of Cr. P. C. on 16th July, 2015. Pursuant to the said order passed under Section 156(3), the aforesaid FIR has been lodged as against the aforesaid persons. The aforesaid complaint was registered as an FIR on 23rd July, 2015. In the said FIR, the complainant has made allegations against all the accused. She has stated that she met accused No. 1 Nakul through shaadi.com and that accused No. 1 disclosed to her that the said marriage could take place only after the approval of the present applicant. She has stated that after the applicant approved of the marriage, the complainant's family was made to purchase articles worth Rs. 21,000/- to present it to the applicant. She has stated that as told by co-accused, articles worth Rs. 21,000/- were bought and presented to the present applicant. She has further alleged in the complaint that when she met the present applicant on 18th February, 2012, while seeking blessings of the applicant and on touching her feet, she presented articles worth Rs. 21,000/- to the applicant. She has further stated that after the applicant gave her nod of approval to the co-accused for her marriage with accused No. 1, on 19th February, 2012, it was decided to have a Roka Ceremony on the very same day, and the complainant's family was informed that there would be 40 people for the said engagement. According to the complainant, for the Tilak Ceremony, various amounts were given in envelopes to the co-accused including the present applicant and her husband. Thereafter, it is alleged by the complainant, that when they went for the applicant's darshan, again an amount of Rs. 51,000/- was given in a sealed envelope along with the flowers and fruits, while seeking the applicant's blessings. Thereafter, the engagement ceremony took place on 28th April, 2012, when certain articles were given to the complainant by her parents. On 30th April, 2012, the complainant got married to accused No. 1. She has listed the articles that were given to her at the time of her marriage, which is her *streedhan*. She has further made several allegations against the co-accused, which need not be gone into in detail. As far as allegations pertaining to the applicant in the FIR, are concerned, the complainant has alleged (i) that when she visited Punjab, her mother-in-law, the applicant and co-accused No. 6 brain washed her husband-accused No.1, pursuant to which, her husband's attitude/behaviour towards her changed; (ii) that when the complainant's father informed the applicant about the demand for dowry of Rs. 25 lakhs by the co-accused, she supported the same and allegedly disclosed that the amount demanded was less because of her and accused No. 6; (iii) that she learnt from the co-accused, that the applicant had told her husband (accused No. 1) that whatever articles were received by her (complainant) in marriage, could be sold and that both, she and her husband could start residing separately. She has alleged that she refused the said suggestion and claimed that the jewellery was her security and refused to sell the same; (iv) that the applicant would instigate the co-accused to assault her; (v) that she was forcibly taken to the applicant's house, where the applicant also assaulted her; (vi) that after her marriage, she was forcibly taken daily to the applicant's darbar from 12:00 noon to 6:00 p.m., where the applicant would compel her to do cleaning work, press her feet, wash utensils and applicant's clothes; (vii) that her mother was also assaulted at the instance of the applicant on 20th September, 2014 and lastly, (viii) that all the accused conspired to ill-treat and harass the complainant and assault her and had not returned her *streedhan* and had used the same for their own purpose.

5. It appears that pursuant to the said complaint, all the accused filed anticipatory bail applications before the Sessions Court. As far as accused Nos. 1 to 6 are concerned, they were granted protection of sufficient prior notice. I am informed that no notice has been served by the

police on any of the accused Nos. 1 to 6, till date. Since notice was served on the applicant, she filed an anticipatory bail application before the Sessions Court, which came to be rejected. Hence, this application.

6. Learned Counsel for the applicant, Mr. Ponda contended that the allegations as against the applicant are false and baseless. He submitted that the complainant had filed a petition in the Family Court being M.J. Petition No. B/49 of 2013, and that no allegations as alleged in the present FIR against the applicant were made in the said Petition. He submitted that infact the private complaint which was filed on 28th May, 2015, was a cut, copy, paste of the petition filed before the Family Court, except with a few additions i.e. with regard to allegations against the applicant. He further submitted that even otherwise, no offence under Section 498-A is disclosed *qua* the present applicant, as she is not a relative of the husband of the complainant. As far as allegations of 406 are concerned, he submits that the petition filed before the Family Court shows that the articles i.e. *streedhan* was taken by the complainant herself and that she was in possession of the same. In view of the same, he submits that no custody of the applicant is required.

7. Learned Counsel Mr. Kulkarni appearing for the intervener opposes the bail application. He submitted that the omissions and contradictions which are sought to be relied upon by the learned Counsel for the applicant, cannot be looked into, at this stage. He submitted that the jewellery i.e. *streedhan* of the complainant was given by the complainant to her mother-in-law, who in turn, had given it to the present applicant. He submits that Section 498-A would apply to the applicant, inasmuch as, she was part of the family of the co-accused and had a hold over the said family. He submitted that certain amounts i.e. Rs. 21,000/- and Rs. 51,000/- were given by the complainant to the applicant on different occasions. According to him, custody of the applicant is necessary for recovery of the *streedhan* of the complainant and the said amounts.

8. Learned A.P.P, at the outset, fairly submits that the applicant cannot be termed as a `relative' in view of the settled law in this regard and that Section 498-A would not apply to the applicant. He relied on the FIR and the statement of the complainant which was subsequently recorded on 6th August, 2015. According to him, the complainant's ornaments worth Rs. 39,75,000/- odd are to be recovered and hence, custody is required.

9. Perused the papers relied upon by both the parties. At the outset, it would be necessary to state a few facts which have come on record during the course of the arguments. It appears that on 14th August, 2013, a petition was filed by the complainant Niki Gupta in the Family Court, Mumbai, being M.J. Petition No. B/49 of 2013. The said petition was for injunction under the Specific Relief Act and under Order XX Rule 12 of the Code of Civil Procedure and under Section 7(1)(c) and (d) of the Family Courts Act. A perusal of the said petition shows that the allegations are against all the co-accused. The reference to the applicant in the said petition is as under; (i) that the accused No. 1 stated that he would get married to the complainant only after approval of the applicant; (ii) that the applicant had given a go ahead to the marriage of the complainant with accused No.1, pursuant to which, an engagement had taken place and thereafter marriage. As far as the demand of Rs. 25 lakhs is concerned, it is not alleged in the said petition, that the applicant demanded or instigated any of the accused to demand a sum of Rs. 25 lakhs or disclosed to the complainant's father that because of her, a lesser amount was demanded; with regard to the stay at Punjab, there is no allegation *qua* the present

applicant in the said petition; and with regard to the allegations under Section 406 are concerned, it appears *prima facie,* from a perusal of paras 18, 19, 20 and 24 of the said petition, that the jewellery was taken by the complainant herself. The relevant portions of paras 18, 19, 20 and 24 read as under :

> *"18. …... The Respondent then started forcing the Petitioner to sell her entire jewelry since he wanted to purchase a house. The Petitioner states that she was not happy about selling her jewelry as she was in need of financial security for herself. The Petitioner was skeptical and worried about the Respondent's behavior towards her since he was totally under the influence of his family members who were instigating him to harass her. The Petitioner needed to secure whatever assets belonged to her. The Petitioner states that she informed the Respondent that she would not sell her jewelry however she was skeptical about the safety of her jewelry. Hence the Petitioner asked her father to help her find a bank locker to keep her valuables safe."*
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> *"19. The Petitioner states that ever since her marriage her jewelry was in the custody of the Respondent's mother and she had not even seen her jewelry for the 7 months after he marriage. When the Respondent started forcing her to sell her jewelry the Petitioner requested the Respondent's mother to hand over her jewelry to her to keep it safely in the bank locker.* ***The Petitioner states that the Respondent's mother refused to hand over the Petitioner her jewelry and eventually after a lot of argument between them, the Respondent's mother finally handed over the Petitioner's jewelry out of contempt****. The Petitioner further states that the Respondent's family members once again tried to poison the Respondent's mind against the*

> *Petitioner which created a major rift between the Petitioner and the Respondent.”*
>
> *“20. The Petitioner states that she tried to make the Respondent understand and realize the value of the jewelry by not selling it.* ***The Petitioner also asked the Respondent to accompany her to the bank to deposit the jewelry in the bank locker however the Respondent did not extend any support to the Petitioner. Eventually the Respondent went all alone to the bank to deposit her jewelry and finally requested her father to come to the bank to help her****. ....”*
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> *“24.* ***The Petitioner states that on 30th June 2013 after breakfast she packed her jewelry before the Respondent and took it to her father's house for safety****...........”*

Nowhere in the entire petition, there is any averment or allegation that thereafter, the jewellery was brought back and entrusted to any of the accused, much less to the applicant.

10. It appears that even the accused No. 1 has filed a petition in the Family Court being M.J. Petition No. 860 of 2014 seeking dissolution of marriage under Section 13(1)(ia) of the Hindu Marriage Act. It also appears from the record that several complaints were filed by the co-accused as against the complainant with the Kandivali Police Station. What is important is a letter dated 30th June, 2013, which is on page 83 of the

application, the very date on which the complainant has alleged in the Family Court Petition that she left the house with her jewellery. In the said letter addressed by the complainant's father-in-law to the Senior Inspector of Police, Kandivali Police Station, it is stated that Niki, his daughter-in-law has left with all her jewellery given by them as well as by her parents and her clothes. There are several such complaints which have been lodged by the co-accused, particularly, the father-in-law of the complainant as against the complainant, including alleged threats by the complainant of committing suicide.

11. The present private complaint out of which, the aforesaid CR arises, was lodged on 28th May, 2015, after almost two years.

12. A perusal of the said private complaint shows that the allegations are essentially against the co-accused that they misrepresented and cheated her by not buying a big house, despite promising to do so; that the accused were demanding Rs. 25 lakhs from her father for the new house; that they were harassing and ill-treating her for not bringing jewellery, cash and valuables from her parents during the wedding, etc.

The private complaint filed in the Court of the learned Metropolitan Magistrate *prima facie* appears to be more or less a cut, copy, paste of the petition filed in the Family Court by the complainant with a few additions. The few additions are with respect to allegations made against the applicant, which are; (a) that when an amount of Rs. 25 lakhs as dowry was demanded from the complainant's father, the complainant's father approached the present applicant and co-accused No. 6 and disclosed to them the said fact, however, the applicant replied that she too is a part of their family and pressurized the complainant's father to fulfill the demand of the accused persons. The present applicant is stated to have disclosed that it is only because of her and co-accused No. 6 that accused No. 1's family has demanded a lesser dowry i.e. of Rs. 25 lakhs from them. It is further stated that the co-accused No. 6 and the present applicant disclosed to the complainant's father that the accused Nos. 2 to 5 were acting on their instructions. It is pertinent to note, that the said allegations have been made for the first time in the year 2015 and there is not even a whisper about the same in the petition filed in the Family Court; (b) in para 12 of the private complaint, it is alleged that even before the marriage, co-accused No. 2 was demanding gold jewellery for the applicant. No doubt, this allegation is not there in the Family Court petition, but even otherwise, it is not the case of the complainant that it was the applicant who was demanding the said jewellery and therefore nothing much turns on the said allegation; (c) the allegation in para 16 of the private complaint is almost identical and corresponds to para 13 of the petition filed in the Family Court, except an addition, that all the illegal demands and acts of violence were happening upon the instigation of the applicant and co-accused No. 6 and that both had a huge role to play in her mental and physical harassment; (d) as far as *streedhan* is concerned, even in the private complaint, in paragraph 23, she has stated that she had taken the said jewellery from her mother-in-law; (e) thereafter, in paragraph 30 in the private complaint, she has stated that when she went for darshan of the applicant, she was assaulted and abused in filthy language and that the present applicant and the co-accused No. 6 would instigate co-accused Nos. 1 to 5 to humiliate, insult and threaten the complainant to bring huge amount of money from her parents.

13. Even in the FIR which was lodged on 23rd July, 2015, there are certain allegations *qua* the applicant, which were not disclosed in the private complaint. Considering what is stated aforesaid, there seems to be

some substance in the submission advanced by the learned Counsel for the applicant, that the private complaint, to a great extent, is nothing but a cut, copy, paste of the petition filed in the Family Court, with additions regarding allegations against the applicant. If the Family Court petition, private complaint and the FIR are perused, it appears that the complainant's allegations against the applicant starts with story and innocuous references and thereafter gets graver. If at all the applicant had such a crucial and major role to play as alleged by the complainant, the same would have certainly reflected in her Family Court petition which was filed way back in August, 2013. No doubt, the Family Court petition filed claiming several reliefs is against the accused No.1, however, there are serious allegations made against other accused Nos. 2 to 5. If at all, the applicant had such a substantial role to play as alleged in the FIR of instigating the co-accused including the accused No. 1 to humiliate, assault, ill-treat, harass the deceased, the same would have certainly found place in the averments made in the petition.

14. Apart from the aforesaid, even otherwise, can the applicant be termed as a relative of the complainant's husband, so as to attract the

provisions of Section 498-A of IPC? Admittedly, the applicant is not related to the complainant's husband by blood, marriage/adoption. She is stated to be a spiritual guru of the family. It would be apposite to advert to the decision of the Apex Court in the case of ***U. Suvetha v. State***[1] in this regard. The issue before the Apex Court in the said case was whether the term "relative of husband of a woman" within the meaning of Section 498-A of the Penal Code should be given an extended meaning or not. In para 18 of the said Judgment, the Apex Court has observed as under :

> *"18. By no stretch of imagination would a girlfriend or even a concubine in an etymological sense be a "relative". The word "relative" brings within its purview a status. Such a status must be conferred either by blood or marriage or adoption. If no marriage has taken place, the question of one being relative of another would not arise."*

15. The submission of the learned Counsel for the intervener that the applicant had a complete hold on the co-accused and that the co-accused acted on her instructions and at her behest and hence the applicant would come within the purview of Section 498-A, appears to be a little too far fetched and ludicrous. Admittedly, the applicant is not related either by

1 (2009) 6 SCC 757

blood, marriage or adoption to the co-accused and hence, Section 498-A will not apply to the applicant.

16. Coming to the next question, with regard to the allegation regarding 406 of the IPC i.e. the allegation that the applicant is in possession of the complainant's *streedhan*. As is stated above in paragraph 9, the complainant has in her petition filed in Family Court in August, 2013 stated in more than one paragraph, that her mother-in-law had given her the jewellery, which she was to deposit in a Bank locker. In fact, in para 24 of the said petition, she has categorically stated that `on 30th June, 2013, after breakfast, she packed her jewellery before the co-accused and took it to her father's house for safety'. *Prima facie*, nowhere, either in the petition or in the private compliant, pursuant to which, the aforesaid C.R. has been lodged, is there anything to indicate/suggest that the complainant thereafter, handed over the jewellery to any of the co-accused, including the applicant. The supplementary statement of the complainant recorded on 6th August, 2015 giving details of her *Streedhan* also does not disclose that the same was given to the applicant. Learned Counsel for the intervener seriously disputes the said fact and states that the jewellery is

with the applicant. However, *prima facie*, the same is not borne out from the material on record, as it stands today. Considering what is stated above, the custody of the applicant is not required.

17. Accordingly, the application is allowed. The applicant is granted anticipatory bail on the following terms and conditions :

ORDER

(i) In the event of arrest, the applicant be enlarged on bail, on executing PR Bond in the sum of Rs. 25,000/- with one or two sureties in the like amount;

(ii) The applicant shall not tamper or attempt to influence or contact the complainant, witnesses or any person concerned with the case.

18. The Application is allowed in the aforesaid terms and is accordingly disposed of.

19. It is made clear that the observations made herein are *prima facie*, for considering and deciding this application and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

20. In view of the above order, the Intervention Application being Criminal Application No. 802 of 2015 also stands disposed of.

21. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.