

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 1356 OF 2014

1 Abdul Rab Khan.
2 Abdul Bari Khan. ... Applicants.
Versus
The State of Maharashtra. ... Respondent.

Mr. Sunil Matkar i/b. Corpslegal, advocate for Applicants.

Mr. Rafiq Ahmed Shaikh, advocate for complainant.

Mr. Y.M. Nakhwa, APP for State.

Ms. Kranti Patil, API, M.R.A. Marg Police Station.

CORAM : SMT. SADHANA S. JADHAV,J
DATE : AUGUST 6, 2015

P.C.:

1 Heard the learned Counsel for the applicants and the Learned
APP for State. Perused the papers.

2 This is an application under Section 439 of the Code of Criminal
Procedure, 1973. The applicants herein are apprehending their arrest
in Crime No. 258 of 2014 registered at M.R.A. Marg Police Station for

offence punishable under Section 498A, 406, 354A, 509, 323, 328, 312, 506(ii) read with Section 34 of the Indian Penal Code.

3 It is the case of the prosecution that the complainant herein happens to be the wife of the present applicant No. 2. They had got married on 25/4/2008. The couple is blessed with a daughter. The wife of the applicant No. 2 lodged a report at the police station on 1/10/2014 alleging therein that she has been residing with her mother since March, 2012. She has given the narrations of the incidents when she was mentally harassed, ill-treated and meted out with cruelty at the hands of the present applicants as well as her mother-in-law, who has been protected by way of pre-arrest bail. She has narrated several incidents. It is alleged that on 24/9/2014 she had been to her matrimonial house to demand her, as well as her daughter's passport. At that time, the applicant No. 1 is alleged to have solicited sexual favours from her and therefore, she had approached the police station and lodged the report on the basis of

which N.C. No. 258 of 2014 is registered against the applicants and other co-accused.

4 The registration of the present offence is an outcome of matrimonial dispute. During pendency of this application, the parties were referred for mediation. Mediation has failed.

5 It is admitted by the complainant that she is living separately from the applicants since 2012.

6 The learned Counsel for the applicant rightly submits that in the interregnum, there was no occasion or reason for the applicants to harass her, ill-treat her. That the complainant has initiated false prosecution against the applicants. According to the learned Counsel, in the present case, custodial interrogation is unwarranted and unjustified.

7 Taking into consideration the facts of the case and the guidelines of the Hon'ble Apex Court in the case of **Arnesh Kumar v/s. State of Bihar reported (2014) 8 SCC 273**, this Court is inclined to grant pre-arrest bail to the applicants.

8 It is made clear that the observations are restricted to an application under Section 438 of Code of Criminal Procedure, 1973 only to ascertain as to whether further incarceration is warranted and the same shall not be considered for the purpose of quashing of FIR or discharge application or at the time of trial. The Trial Court shall decide the matter on its own merits uninfluenced by the above observations.

9 Hence, following order is passed :

ORDER

(i) The application is allowed.

(ii) In the event of arrest, the applicants be released on bail on furnishing P.R. Bond in the sum of Rs. 25,000/- each and one or two sureties in the like amount.

(iii) The applicants shall report to the concerned police station on four consecutive Sundays commencing from 22/8/2015 between 10.00 a.m. to 1.00 p.m. and cooperate with the investigating agency to the best of their capacity.

10 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)