

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 1379 OF 2014

1 Gajanan Anand Gire.
2 Anand Baba Gire.
3 Satyabhama Anand Gire. ... Applicants.

Versus

The State of Maharashtra. ... Respondent.

Mr. Amit Ashok Yadkikar, advocate for Applicants.

Mr. A.S. Shitole, APP for State.

CORAM : SMT.SADHANA S. JADHAV,J

DATE : JANUARY 5, 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 438 of the Code of Criminal Procedure, 1973. The applicants herein are apprehending their arrest in Crime No. 138 of 2014 registered at Samarth Police Station for offence punishable under Section 498A, 406, 504, 506(1) read with Section 34 of the Indian Penal Code and Section 4 of Dowry Prohibition Act. Learned APP submits that subsequently Section 377 of the Indian Penal Code has also been added.

3 It is the case of the prosecution that on 22/1/2014 the applicant No. 1 got married to the complainant at Alandi. Mother of the bride had not allowed her to stay in her matrimonial home soon thereafter and on 22/2/2014 the wedding ceremony was held at Pune on a large scale. On 24/2/2014 the applicant No. 1 had taken the bride to their native town Hingoli. It appears that on 4th March, 2014 the bride had gone to maternal house. On 14th March, 2014 the bride/complainant reached to her matrimonial house and thereafter they had been to Panchagani. After they returned, a discordant note had struck between the newly wedded couple. On 27th March, 2014

wife of the applicant No. 1 had left her matrimonial house and had gone to reside with her parents.

4 It appears that the relations had become strained to a great extent. The applicant No. 1 had filed a police complaint against his wife and the other relatives on the basis of which N.C. No. 271 of 2014 was registered at Samarth Police Station. On 1/6/2014 the applicant No. 1 had filed a hindu marriage petition before the Civil Judge, Senior Division at Hingoli. He had filed an application under Section 14 of the Hindu Marriage Act. The said proceeding was registered as Marriage Petition No. 245 of 2014. The said Petition has been dismissed by the learned Court on the ground that the marriage had not been in substance for a minimum period of one year and that the test laid under Section 14 of the Hindu Marriage Act was not satisfied. The applicant No. 1 is working as a P.S.I. and is attached to Sevagram Police Station, Vardha.

5 On 2/9/2014 the wife of the present applicant No. 1 approached the police station and lodged the report against her

husband and other members of the matrimonial family and had levelled various allegations against all the members of the matrimonial family. It is alleged that there has been a demand of dowry. It is also alleged that the applicant No. 1 had threatened the father of the complainant in the month of May, 2014. It is specifically contended in the FIR that the complainant had gone to the house of the applicant No. 1 at Somwar Peth, Pune and had opened the house with the duplicate key which she possessed. She has taken away wearing apparels and other articles which were gifted to her at the time of marriage. In the first information report, she has alleged that on 14th March, 2014 at about 5.30 p.m. when they had been to Panchgani, the applicant No. 1 had performed unnatural sexual intercourse with her. It is also alleged that he had repeated the same act thereafter.

6 It is a matter of record that she has lived as wife of the present applicant No. 1 only from 22/2/2014 till 22/3/2014. The FIR has been lodged in the month of September, 2014. The complainant was sent for medical examination on 3/9/2014. She had complained to

the Medical Officer about anal intercourse by her husband. Medical Officer has observed that upon examination of the complainant, there is evidence of anal intercourse. It is pertinent to note that medical examination was conducted after more than 6 months of the alleged act.

7 Be that as it may, the applicants were granted interim protection by this Court from 7/11/2014 to 18/11/2014. The applicants had attended Samarth Police Station everyday for two hours and had fully cooperated with the investigation. The applicant No. 1 had undertaken to cooperate with the investigating agency to the best of his capacity. He was not referred for medical examination by the investigating agency. On 19/11/2014 the condition imposed upon the applicants was relaxed. Pursuant to the directions of this Hon'ble Court dated 22/12/2014 the applicants had again attended the police station on 29th December, 2014, however, was not referred for medical examination. It appears that the investigating agency had no intention to conduct any medical examination of the present applicant. In spite of this, the learned Counsel submits that he would

cooperate with the investigating agency to the best of his capacity even hereinafter and would report to the police station as and when called.

8 The Hon'ble Apex Court in the case of **Arnesh Kumar v/s. State of Bihar (2014) 8 SCC 273** has specifically observed that the prosecution under Section 498A of the Indian Penal Code should not become a case of persecution and hence, this Court is inclined to confirm the interim relief granted in favour of the applicants.

9 The observations made hereinabove are prima facie in nature. The same shall not be considered while considering an application for quashing of FIR or for deciding the discharge application or at the time of trial.

10 Hence, the following order is passed :

ORDER

(i) The application is allowed.

(ii) In the event of arrest, the applicants be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 15,000/- each and one or two sureties in the like amount.

(iii) In the eventuality that the Investigating Officer desires to subject the applicant No. 1 to medical examination on a specific date, he shall call upon the applicant No. 1 by issuing a notice to him under Section 160 of the Code of Criminal Procedure, 1973 by giving him a margin of 72 hours. The applicant No. 1 being a public servant and is attached to Vardha Police Station, this condition is imposed.

11 The application stands disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)