

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AT AURANGABAD.**

Criminal Application No. 4345 of 2016

District : Aurangabad

Amar s/o. Ramrao Patil,
Aged 29 years,
Occupation : Service,
R/o. 21, Grishma Apartment,
Utara Nagari, M.I.D.C.,
CIDCO, Aurangabad.

.. Applicant.

versus

The State of Maharashtra,
Through Police Inspector,
Police Station, M.I.D.C.,
CIDCO, Aurangabad.

.. Respondent.

.....

Mr. V.D. Salunke, Advocate, for the applicant.

*Mrs. P.V. Diggikar, Addl. Public Prosecutor,
for the respondent.*

*Mr. Gajanan G. Kadm, Advocate, for the
original complainant (Applicant in
Criminal Application No. 4419/2016 preferred
by the original complainant)*

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CORAM : A.M. BADAR, J.

DATE : 22ND AUGUST 2016

ORAL ORDER:

The applicant / accused in Crime No.
0222/2016, for offences punishable under Sections

307, 323, 504, 506 read with Section 34 of the Indian Penal Code, registered with Police Station, M.I.D.C., CIDCO, Aurangabad, at the instance of his wife, by this application, is seeking pre-arrest bail.

2. Heard the learned Counsel appearing for the applicant / accused. By taking me through previous history, medical as well as matrimonial of the informant, the learned Counsel argued that chances of false implication of the applicant / accused cannot be ruled out. The learned Counsel further argued that parties are litigating since long.

3. The learned Addl. Public Prosecutor opposed the application by contending that injury certificate of the informant goes to show that there are no chances of false implication of the applicant. She drew my attention to the statements of neighbours and relatives of the informant in order to point out previous statement of the informant which is admissible in view of Section 157 of the Indian Evidence Act.

4. I also heard the learned Counsel for the informant. He argued that the informant is even ready for lie detector test.

5. Perused papers of investigation, so also the documents annexed to the application. The offence is

arising out of matrimonial dispute and as such, one will have to examine whether custodial interrogation of the present applicant, who appears to be serving as Cashier in the nationalized Bank, is required or not.

6. The applicant had married informant Supriya on 01.05.2014. She reported Police on 21.06.2016, that the present applicant as well as her mother-in-law and sister-in-law attempted to kill her in her matrimonial house.

7. According to the learned Counsel for the applicant, the informant is suffering from some medical as well as psychological problem which renders her unfit for carrying out matrimonial obligations. My attention is drawn to the medical case paper of the informant dated 28.05.2012 showing her medical treatment at Palnitkar Hospital, Aurangabad. The Doctor had recorded her history as primary Amenorrhea, meaning thereby, absence of menstruation. The Doctor had reported absence of uterus in the informant and advised for surgery to create new vagina. This is the medical report prior to the marriage of the informant with the present applicant. The same finding is reiterated by Ciigma Hospital, Aurangabad, by reporting that the informant is having inability to have intercourse since last 6 months and she is case of primary Amenorrhea.

8. Prima facie it is seen that married life of the applicant as well as the informant was going through rough weather at the time of the incident in question. Co-accused Mangala, who is mother of the present applicant, had filed a suit for declaration against the present applicant as well as the informant and also prayed for injunction restraining entry of defendants in her house. Then, it is seen that the present applicant had filed a petition for nullity of marriage before the Family Court at Aurangabad against the informant, with an allegation that there was no development of vagina of the informant and her uterus is totally absent. On this backdrop, the learned Addl. Public Prosecutor has pointed out the certificate issued by the Government Gynecologist pointing out that the informant is having capacity of sexual contact.

9. On 08.06.2016, co-accused Mangala - mother of the present applicant had lodged a report against the informant regarding trespass and theft. This is followed by another report dated 13.06.2016 by co-accused Mangala.

10. On this backdrop, averments in the FIR by the informant are to the effect that on 21.01.2016, initially she informed Police regarding beating by the applicant and co-accused. Then Police came and

pacified the parties. The informant then averred that at about 09.00 p.m. to 09.30 p.m., she was assaulted by co-accused Mangala and Pallavi. Thereafter, the applicant threw a bag of luggage which hit her. Then, the informant averred that the applicant assaulted her by means of fist and kick blows. Qua the present applicant, the informant averred that he put a pillow on her face and attempted to kill her.

11. Section 307 of the IPC does not require causing actual injury. However, nature of injuries suffered by the victim and the weapon used give inference about intention of the accused. In the case in hand, informant Supriya had suffered injuries in the nature of blunt trauma and abrasions. The concerned Medical Officer has reported those injuries to be simple. Therefore, the question would be, whether offence would be falling under Section 307 of the IPC or some lesser offence like one punishable under Section 323 of the IPC.

12. If averments are examined in the light of chequered history of discord in matrimonial life of the applicant and the informant, possibility of adding embellishment by the informant cannot be ruled out. It hardly needs to emphasize that arrest brings humiliation and affects not only the accused but also his family members.

13. Considering all these aspects, prima facie commission of offence punishable under Section 307 of the IPC is highly doubtful and, therefore, custodial interrogation of the present applicant is not warranted. Hence, I pass the following order :-

(a) The interim order dated 5th August 2016, granting ad interim anticipatory bail to the applicant, is confirmed on the same terms and conditions.

(b) As a condition of this order, the applicant shall attend concerned Police Station on 28th August 2016, in between 11.00 a.m. and 01.00 p.m. and thereafter as and when reasonably called by the Investigating Officer for the purpose of investigation.

(c) The applicant shall not, directly or indirectly, make any inducement, threat or promise to any persons acquainted with the facts of the case so as to dissuade them from disclosing such facts either to the Court or to any police officer.

(d) The applicant shall not tamper with the prosecution evidence in any manner.

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

(A.M. BADAR)
JUDGE