

sas

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.74 OF 2016

AjaysinghKrishapalsingh Chouhan and Ors. ..Applicants.

V/s.

State of Maharashtra and Anr.

..Respondents.

Mr.Rajiv Patil,Senior Advocate with Mr.Tanmay R.Vispute for applicants.

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

Ms.Sandhya Mailagir for respondent No.2.

CORAM : AM.BADAR, J.

DATED : 13TH JUNE, 2016

P.C. :-

1. Applicants / accused in Crime No.190/2015 for offences punishable under section 498A, 406, 313, 323, 504 and 506 read with 34 of the Indian Penal Code registered at Dighi Police Station, Pune on transfer of F.I.R. from Mira Road Police Station, District Thane, at the instance of Pooja Ajaysingh Chauhan, by this application are praying for pre-arrest bail.

2. Applicant No.1 is the husband whereas applicant

No.2 Savitribai is the mother-in-law and applicant No.3 Krishnapalsingh Narendrasingh Chouhan is the father-in-law of the informant Pooja Ajaysingh Chouhan.

3. Heard the learned senior counsel for the applicant. He argued that there is no supporting medical evidence to demonstrate prima facie that applicants have caused miscarriage of the information. He further argued that the F.I.R. itself reflects that the informant was not residing along with the mother-in-law and father-in-law from 7th September, 2014 onwards and as such, there is no question of harassment or cruelty to the informant at the hands of the present applicants. He further argued that allegations of cruelty are also vague.

4. As against this, the learned APP by placing reliance on medical case papers of the informant maintained at Dr. Mehta's Maternity Home at Mira Road argued that the averment in the F.I.R. so far as allegation in respect of offence punishable under section 313 of the Indian Penal Code are prima facie corroborated. He further argued that the offence alleged is serious and, therefore, the application is liable to be

rejected.

5. I have also heard the learned counsel appearing for the informant Pooja. She submitted that applicants had caused abortion of the informant and subjected her to cruelty in order to coerce her to meet there illegal demand of money and other valuable things.

6. Perused the case diary as well as papers of medical treatment of the informant Pooja.

7. Averments in the F.I.R. in respect of the offence punishable under section 313 are to the effect that on 2nd October, 2015 applicant No.2 Savitribai twisted hand of the informant and gave kick on her abdomen. It is further averred that applicant No.2 Krishnapalsingh gave a kick blow on abdomen of the informant Pooja. This, according to the prosecution, caused per vaginal bleeding leading to abortion.

8. Learned senior counsel for applicants had handed over papers of medical treatment of Pooja which are taken on record. It is seen from that she was subjected to early

antenatal scan on 24th September, 2015 and thereafter on 2nd October, 2015. On 2nd October, 2015 impression shows sign of live foetus of age 11 weeks and 4 days. Mild acute subchorionic haemorrhage was also seen in the scan. Subsequently, on 4th October, 2015 in radiological examination of Pooja, subchorionic haemorrhage measuring 28 mm in length and 7 mms in thickness is noted along with the inferior aspect of the sac.

9. As seen from the F.I.R. Pooja was very much at her parental house where she was treated at Maternity Home of Dr. Mehta. During investigation, papers of her medical treatment are collected from the hospital. Perusal of these papers shows that no history of assault by in-laws was stated either by the informant or by her father, who had taken her to the said hospital. On the contrary, those papers of medical examination shows that the informant was suffering from per vaginal bleeding in past. It is noted in those papers that bleeding was continuous but since 2nd October, 2015 it was mild. The fact that the medico-legal history of assaulting the informant is conspicuously missing even in the medical papers of Dr. Mehta's Maternity Home, where informant was taken by

her father, prima facie casts a shadow of doubt on the averments in the F.I.R. to the effect that applicant Nos.2 and 3 had assaulted Pooja causing her abortion.

10. Perusal of the F.I.R. goes to show that applicant No.1 and the informant married on 24th April, 2012 and as applicant No.1 was serving at Merchant Navy he used to come to the matrimonial house after a gap of four months. It is alleged in the F.I.R. that applicants were harassing Pooja by asking her to bring 2 AC units, a car and scooty. The averments are to the effect that she used to be subjected to physical and mental cruelty. The acts are not described so as to prima facie examine whether those will fall within the definition of cruelty as envisaged to the explanation to section 498A of the Indian Penal Code. The F.I.R. also shows that there was demand of Rs.50 lacs with an understanding to make immediate payment of Rs.5 lacs. The cruelty implies harassment and harmful conduct of certain intensity. The F.I.R. does not prima facie reflect any tyrannical act.

11. Considering the nature of evidence against present applicants and the fact that in matrimonial offence, apart from

the husband, in-laws are also involved, liberty of applicants need to be protected and their custodial interrogation is not at warranted. Hence the order:-

- (i) The application is allowed;
- (ii) Order dated 4th February, 2016 is confirmed on the same terms and conditions;
- (iii) In addition, applicants / accused shall attend Dighi Police Station, Pune on 19th and 26th June, 2016 between 11.00 a.m. to 1.00 p.m.;
- (iv) Applicants / accused shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of accusation against applicants so as to dissuade him from disclosing such facts either to the Court or to any police officer and that they shall not tamper with the evidence;
- (v) Applicants / accused shall inform their latest place of residence and cell number after their release and continue to inform the change in residence or cell number, if any, from time to time to the Investigating Officer of the concerned police station and on filing the charge-sheet to the concerned Court;

- (vi) Applicants / accused shall co-operate for expeditious disposal of the trial;
- (vii) Applicants / accused shall not commit an offence similar to the offence of which they are accused or suspected of the commission;
- (viii) Applicants / accused shall not leave India without the prior permission of the concerned Court;
- (ix) The application is disposed of accordingly.

(A.M.BADAR, J.)