

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO. 317 OF 2016

Mr. Jafar Pirmohamad Shaikh ... Applicant.

V/s.

The State of Maharashtra & Anr. ... Respondents.

Mr. Akhilesh Dubey a/w.Mr.Vagish Mishra, Miss. Rani Dubey
Advocates i/by M/s. Law Counsellors for the Applicant.

Ms. Veera Shinde, A.P.P. for the Respondent No.1– State.

Mr. Anirban Tripathy, Advocate for the Respondent No.2.

CORAM : A. M. BADAR, J.

DATE : 21st JUNE, 2016

P.C. :

1 Learned counsel appearing for the Applicant seeks leave to place on record printed copies of the text messages allegedly sent by the informant to the applicant. Leave granted and the said document is taken on record.

2 The Applicant/accused in Crime No. 228 of 2016 for the offences punishable under sections 498-A, 506(2), 495, 313, 504, 506 of the Indian Penal Code and under section 66 (E) of Information and Technology Act, registered with Kamothe Police Station, Kamothe, Tal. Panvel by this application under section 438 of the Criminal Procedure Code, is praying for pre-arrest bail.

3 Heard the learned counsel appearing for the Applicant/accused. By taking me thorough the documents annexed with the application, the learned counsel for the applicant submitted that the present applicant as well as the informant were leading a happy married life and the informant was well aware about earlier marriage and sons of the present applicant. Learned counsel further argued that even photographs of the informant taken at the hospital will go to show that so-called abortion of the informant was carried out with her own consent as she was interested in her career. By pointing out some photographs, it is argued that just 20 days before lodging the FIR, the couple had been for a picnic to Vaishnaodevi. It is further argued that even mother and brother of the informant had accompanied the couple. It was argued that the informant is trying to falsely implicate the applicant in the offence just to gain monetary advantage, as she is coercing the applicant to purchase a flat in her name.

4 As against this, learned APP argued that even prior to lodging of the FIR as well as subsequent to lodging of the FIR, several non-cognizable cases are registered against the present applicant because of the threats given by him either to the informant or her family members. Learned APP further argued that at the time of marriage, the applicant had given a declaration that he is unmarried person.

5 I have also heard the learned counsel appearing for the informant at great length. He submitted that marriage of the informant with the applicant was solemnized under the Special Marriage Act and as per the provisions of the said Act, the parties to the marriage should not have subsisting marriage on the date of solemnization of the marriage. The learned counsel for the informant as such argued that the informant was cheated by the applicant, by stating that he is an unmarried person. Learned counsel further argued that the persons seen in the photographs were stated to be cousins of the present applicant. It is further argued that the applicant had taken video recording of some intimated moments spent by the couple and he had threatened the informant that those videos will be made public. Learned counsel further argued that though as per the directions of this court, cell phone has been handed over to the investigating officer by the present applicant, the data therein was deleted by the applicant and, therefore, custodial interrogation of the applicant is warranted.

6 I have perused the papers of investigation including the FIR. In her FIR lodged on 24th November, 2015, first informant-Kaveri Babasaheb Jaibhaye has alleged that she was an employee of J.P. S. Builders and Developers of which the present applicant is one of the partners. As per the version

of first informant, the applicant used to give obscene taunts to her and once he had asked her whether she will marry him. It is further averred that the informant answered in the negative. Thereafter, the informant accompanied him to Kashmir where he established physical relations with her. According to the informant, subsequently she stopped going to the office and the applicant thereafter threatened her that he will make obscene video clippings and photographs, public. Thereafter, the informant again joined the office. As per the version of the informant, again under the threats of the applicant she allowed him to have physical relations with her. Upon questioning, the applicant told her that he has given divorce to his wife. The informant further averred that the applicant married her on 06th September, 2014. The averments in the FIR further show that subsequently, she was aborted on two occasions in the hospital without her consent at the instance of the applicant. The informant further averred that she came to know that the applicant is having two wives and six sons. It is further averred that the applicant used to demand an amount of Rs. 1 or 2 lakhs from her and he used to subject her to cruelty.

7 From the Marriage Certificate placed on record, it is seen that the informant married the applicant on 06th September, 2014 and it was a registered marriage. Photographs placed on record, in submission of the learned

counsel for the applicant indicates that even prior to this marriage the informant is seen in the company of the earlier wife and children of the present applicant. The photographs dated 15.02.2015 and 16.02.2015 appear to have been taken in the hospital. According to the learned counsel for the applicant, the informant is seen in those photographs. Prima facie, these photographs do not show that hospitalization of the informant was against her wish. The photographs dated 22.02.2015, 01.06.2015, 02.11.2015 and 13.10.2015 shows that the couple therein was living happily and enjoying the married life. The couple seen in those photographs, according to the learned counsel for the applicant, is the informant and the applicant. This fact is neither disputed by the learned APP nor by the learned counsel for the informant. The document at Exh. "G" placed on record goes to show that the shop-block is standing in the name of the informant. According to learned counsel for the applicant this shop-block is purchased by the applicant in the name of the informant. This statement is also not disputed. Several bills of purchase of jewellery are also placed on record. It is argued that the jewellery shown therein was purchased by the applicant for the informant. This is the material which is required to be kept in mind while deciding the instant application, as allegations are mainly regarding the offence punishable under section 498-A of IPC..

8 It is true that there are some messages exchanged between the parties and particularly sent by the applicants which are annexed to the reply of the informant. However, the learned counsel for the applicant has also placed on record text messages, allegedly sent by the informant to the applicant. Prima facie, it appears that in a charged atmosphere both the parties were teasing each other in such a language which surpasses all standards of morality and decency. Prima facie, at this stage, no finding about blameworthiness can be recorded.

9 It is seen that the dispute between parties is predominantly a matrimonial dispute and as such considering the nature of the allegations, custodial interrogation of the present applicant is not at all warranted. Apprehension of the informant that the applicant will threaten her and cause harm to her family members can be taken care of by imposing stringent conditions on the present applicant. Hence, the following order :-

ORDER

- i. The application is allowed.
- ii. Order dated 18th February, 2016, granting ad-interim anticipatory bail to the present applicant, is confirmed on the same terms and conditions.

- iii. As a further condition, the Applicant should attend the Police Station, Kamothe, New Mumbai on every Saturday and Sunday from 11 a.m. to 1 p.m. till filing of the charge-sheet and he should co-operate in investigation of the crime.
- iv. In addition, the applicant /accused is directed that he shall not extend any threat to the informant and directly or indirectly and he shall not make any inducement, or promise to any person acquainted with the facts of accusation against him so as to dissuade such person from disclosing such facts either to the Court or to any police officer. The applicant shall not tamper with the prosecution evidence in any manner.
- v. The applicant should co-operate for expeditious disposal of the trial, in the event of filing of the charge-sheet.

(A. M. BADAR, J.)

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