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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.438 OF 2016

Sushil Chandreshwar Tiwari and ors

.... Applicants

V/s.

The State of Maharashtra and anr

.... Respondents

Ms. Neha Prashant, I/by ALMT Legal, for the Applicant.

Mr. A. B. Tajane, for the informant.

Mr. Deepak Thakery, APP for the Respondent State.

CORAM : A. M. BADAR, J.

DATE : 10th JUNE, 2016.

P.C. :

1. The applicants/accused, in Crime No.7/16 (5/16), registered at Mundhwa Police Station, Pune, at the instance of Mrs. Arati Tiwary, for the offence punishable under Sections 498(A), 323, 504, 506(1), 406 read with 34 of the Indian Penal Code, are praying for pre-arrest bail.

2. Heard learned counsel for the applicants. By pointing out the date of marriage, date of leaving matrimonial house, date of visit of applicant No.1 to the parental house of informant as well as SMSes exchanged between the parties, she contended that the applicants are entitled to pre-arrest bail.

3. As against this, learned APP opposed this application by pointing out that the averments made in the F.I.R. are serious in nature and therefore, no relief can be granted.

4. I have extensively heard learned counsel appearing for the informant and perused affidavit of informant Arati Dubey.

5. The learned counsel for the informant contended that at the time of marriage an amount of Rs.11 lacs was extracted as dowry from the parents of the informant. He further argued that thereafter also from time to time, there were various illegal demands of money from the parents of the informant.

6,. The learned counsel further argued that during the stay of informant at her matrimonial house as seen from the F.I.R., the applicants used to subject her to cruelty. They had taken out ornaments from the informant when the informant left the matrimonial house. Subsequently also demand of Rs.5 lacs was made and therefore, prima facie cruelty is established and the applicants are not entitled to have any relief.

7. Upon hearing the rival submissions and on perusal of the record made available, it is seen that the allegations of cruelty are reflected in paragraph No.4 of the F.I.R., lodged by Arati Tiwary. The F.I.R. mentions that when the informant started residing with the applicants, they started taunting her. It is further mentioned that the

applicants were giving physical as well as mental harassment to her. The informant further reported that when the couple returned from honeymoon, her sister-in-law Nidhi was not allowing the informant to talk with her husband for more time and she was not providing food to the informant. F.I.R. further discloses that the father-in-law used to ask the applicant to massage the feet and on refusal, used to abuse the informant. It is stated in the F.I.R. that on 26.01.2015, the brother of the informant took her to her parental house and at that time applicants did not give golden ornaments to the informant. According to F.I.R. the applicant husband had demanded Rs.5 lacs for taking the informant to her matrimonial house.

8. This is the gist of entire allegations of cruelty reflected in the F.I.R. which is even reiterated in the affidavit tendered by the informant.

9. Now let me examine what are the requirements for constituting offence punishable under Section 498A of the IPC. What is "cruelty" is defined in explanation to Section 498A of the IPC. The term cruelty employs harsh conduct wherein intensity and persistence. The domestic cruelty is one thing and legal cruelty is the other thing. In order to constitute act of legal cruelty, one is required to show willful conduct on the part of accused persons. It should be of such a nature as is sufficient to drive, a married woman to commit suicide or to cause grave

injury or danger to her life or limb. Similarly harassment of woman with a view to coerce her or person related to her made unlawful demand of property or valuable security can also be said to be cruelty if such harassment is tyrannic to drive a woman to commit suicide. The allegations in this context in the F.I.R. prima facie depict the domestic cruelty rather than legal cruelty as envisaged by explanation to section 498A of IPC. No details and particulars about so called abuses or assault are disclosed.

10. While examining the matter for grant of anticipatory bail, the nature and severity of allegations as well as nature of offences constituting major role is required to be considered. In the case in hand the applicants are husband, father-in-law as well as brother-in-law. The allegations prima facie appear to be general in nature. The perusal of prosecution case goes to show that nothing is there to warrant the custodial interrogation of the applicants. In this view of the matter, the following order.

Order

- I) The applications is allowed.
- ii) Ad-interim anticipatory bail granted on 4.3.2016 is confirmed on the same terms and conditions.
- lii) As condition of this order, the applicants shall attend the

concerned police station on 19th and 26th June, 2016 in between 11.00 a.m. to 1.00 p.m. and they should co-operate the Investigating Officer.

iv) The applicants shall not exchange any threat, promise or inducement to persons acquainted with the accusation against them so as to dissuade them from disclosing the same either to the Court or to the police.

v) They shall not tamper the prosecution evidence in any manner.

vi) The applicants shall co-operate in expeditious disposal of trial.

[A. M. BADAR, J.]