

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

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 1775 OF 2016

Swapnil Nandakishor Arote ... Applicant.
Versus
The State of Maharashtra. ... Respondent.

Mr. Sandip D. Shinde, advocate for Applicant.

Mr. Vinod Chate, APP for State.

Ms. Savita K. Sawala, PSI, Mhasrul Police Station.

**CORAM : SMT. SADHANA S. JADHAV,J
DATE : OCTOBER 17, 2016**

P.C.:

1 Heard the learned Counsel for the applicant 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 applicant herein is apprehending his arrest in C.R. No. 175 of 2016 registered at Mhasrul Police Station for offence punishable under section 498A, 406, 323, 506 read with section 34 of the Indian Penal Code.

3 It is the case of the prosecution that the present applicant was married to the complainant on 22/5/2011. It appears from the record that a discordant note had struck between the couple and wife of the applicant had gone to her maternal house. The applicant had filed petition before the Family Court at Nashik under Section 9 of the Hindu Marriage Act for restitution of conjugal right. The said petition was allowed and the respondent therein was directed to resume cohabitation with the applicant forthwith and discharge marital obligations. The judgment was delivered on 20/11/2015. On 10th May, 2016 wife of the applicant lodged the report against the present applicant and his family members alleging therein that she had been ill-treated at the hands of the present applicant. The applicant is being prosecuted under section 498A, 406, 323, 504, 506 read with section 34 of the Indian Penal Code.

4 In view of the Hon'ble Apex Court in the case of **Arnesh Kumar v.s State of Punjab reported in (2014) 8 SCC 273**, the Hon'ble Apex Court observed thus :

“There is phenomenal increase in matrimonial disputes in recent years. The institution of marriage is greatly revered in this country. [Section 498-A](#) of the IPC was introduced with avowed object to combat the menace of harassment to a woman at the hands of her husband and his relatives. The fact that [Section 498-A](#) is a cognizable and non-bailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives. The simplest way to harass is to get the husband and his relatives arrested under this provision. In a quite number of cases, bed-ridden grand-fathers and grand-mothers of the husbands, their sisters living abroad for decades are arrested. Arrest brings humiliation, curtails freedom and casts scars forever. The existence of the power to arrest is one thing, the justification for the exercise of it is quite another. No arrest can be made in a routine manner of a mere allegation of commission of an offence made against a person.”

5 Taking into consideration the nature of allegations and the
relations between the parties, the applicant herein deserves to be
granted pre-arrest bail.

6 However, it is made clear that the observations made herein
above are prima facie in nature and are restricted to the application
under section 438 of the Code of Criminal Procedure, 1973. The
learned Sessions Judge shall not be influenced by the same at the
time of deciding an application for discharge or quashing of FIR or at
the time of trial.

7 Hence, following order is passed :

ORDER

(i) The application is allowed.

(ii) In the eventuality of the arrest in Crime No. 175/2016, the
applicant be enlarged on bail on furnishing P.R. Bond in the sum of
Rs. 25,000/- and one or more sureties in the like amount.

(iii) The applicant shall report to the police station as and when called out after issuing notice under section 160 of the Code of Criminal Procedure, 1973.

8 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)