

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 314 OF 2017

1. Udhavan Anbukkarasu NaiduApplicants
2. Anbukkarasu Vardharaj Naidu
3. Sharda Anbukkarasu

V/s.

The State of MaharashtraRespondent

Mr. Rajendra M. Narvankar Advocate for the Applicant.

Mr. Ajay Patil APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : 6th MARCH, 2017.

PC :

1) Heard. This is an application under section 438 of Code of Criminal Procedure, 1973. Applicants herein are apprehending their arrest in crime no. 224 of 2016 registered at Mira Road police station for offence punishable under sections 498 (A), 327. 504, 506 r/w 34 of the Indian Penal Code.

2) It is the case of the prosecution that on 04/10/2016, Narayan Naydu lodged a report at the police station alleging therein that his daughter Jayanti

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was married to the present applicant on 25/10/2015. that from 25/12/2015 to 10/03/2016, Jayanti was residing with her parents at that time, she had informed that she is being harassed by her husband and her in-laws. On 25/03/2016, Jayanti had gone to reside with present applicant despite the opposition from her parents. It is alleged that mother of Jayanti was not permitted to meet her daughter. In August 2016 also the mother was not allowed to meet Jayanti. It is alleged that on 28/09/2016, when the informant was at Chennai, he received a phone call from mother of the present applicant contending therein that Jayanti is seriously ill and that she is admitted in the hospital. She was under treatment. The first informant had called his wife to Chennai. Jayanti had died in the hospital while she was taking treatment. The doctor had informed that Jayanti had died due to "*Dengue and disease of liver*". The primary allegation is that the applicant had not allowed Jayanti to meet her parents on 2 to 3 occasions.

3) Upon perusal of papers of investigation, it appears that the cause of death is :

"Pulmonary haemorrhage with fatty liver with plural effusion".

4) It appears from the records that the applicant had given timely medical treatment to his wife despite that she had died on 29/09/2016. The F.I.R. is lodged on 04/10/2016. There is a delay in lodging the F.I.R. and there is no plausible explanation for the inordinate delay. In any case, the cause of death is certain i.e. illness of Jayanti. In view of the guidelines of the Hon'ble Apex Court in the case of **Arnesh Kumar v/s. State of Bihar [(2014) 8 SCC 273]** wherein the Hon'ble Apex Court has observed as follows:

“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 cast 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) In view of the above discussion, applicants deserve anticipatory bail. However, it is made clear that observations made herein above are restricted to an application under section 439 of the Code of Criminal Procedure, 1973 and shall not be considered for quashing of F.I.R., discharge application or at the time of trial.

ORDER

- (i) Application is allowed.
- (ii) Applicants be enlarged on bail on furnishing P.R. bond in the sum of Rs. 25,000/- each with one or more local solvent sureties in the like amount.
- (iii) Applicants shall report to the concerned police station as and when

called.

(iv) Application stands disposed of.

(SMT. SADHANA S. JADHAV, J.)