

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 688 OF 2017**

Mohsin Vasim Khan

...Applicant

Versus

1. The State of Maharashtra,
2. The Inspector of Police,
3. Mouzma Mohsin Khan @ Reshma

...Respondents

Mr. Sushil M. Gaglani for the Applicant

Ms. Anamika Malhotra, A.P.P for the Respondent Nos. 1 & 2-State

Mr. Arvind Kumar Tiwari for the Respondent No. 3

CORAM : REVATI MOHITE DERE, J.
MONDAY, 7th AUGUST, 2017

P.C.

1. Heard learned Counsel for the parties.
2. By this application, the applicant seeks quashing and setting aside of the order dated 24th January, 2017 passed by the learned Sessions Judge, Mumbai, by which, the applicant's anticipatory bail came to be cancelled.

3. Learned Counsel for the applicant submits that the order dated 24th January, 2017, passed by the learned Sessions Judge, Mumbai, was unwarranted and perverse. He submits that there was no justification for the learned Sessions Judge to cancel the anticipatory bail granted to the applicant, as the applicant had not committed breach of the said order dated 31st October, 2015, granting pre-arrest bail to the applicant.

4. Learned Counsel for the complainant opposes the application. He submits that as the applicant had concealed and suppressed certain vital material, the learned Sessions Judge granted pre-arrest bail to the applicant. He further submitted that the *streedhan* is yet to be recovered from the applicant and that the applicant had flouted the condition of the anticipatory bail. He further submitted that the applicant had threatened the complainant to withdraw the case lodged by her, pursuant to which, an NC has been lodged against him.

5. Perused the papers. The applicant is the husband of respondent No. 3. The applicant was granted pre-arrest bail vide order dated 31st October, 2015, by the learned Additional Sessions Judge, Mumbai, in

connection with C.R. No. 226 of 2015 registered with the Malvani Police Station, for the alleged offences punishable under Sections 498(A), 406, 328, 509, 377 r/w 34 of the Indian Penal Code. It appears that in the order dated 31st October, 2015, the learned Judge in para 8 of the said order has observed, that the applicant and the complainant were residing separately for about 2 years, prior to the registration of the FIR. Learned Judge has also observed that nowhere in the FIR, the description of the *streedhan* articles or details have been set-out nor any statement is made, that the applicant is in possession of any article belonging to her.

6. It appears that pursuant thereto, i.e. in February, 2015, the complainant filed an application, seeking cancellation of the pre-arrest bail granted to the applicant. The said application came up for hearing only in January, 2017, and the learned Sessions Judge, after hearing the parties, vide order dated 24th January, 2017, was pleased to cancel the anticipatory bail granted to the applicant. It was observed that the respondent No. 2 had committed breach of the conditions and hence, the application preferred by the complainant is being allowed and the anticipatory bail granted to the applicant vide order dated 31st October, 2015 was cancelled.

7. A perusal of the said order dated 24th January, 2017, shows essentially three reasons for cancelling the anticipatory bail of the applicant; (i) that the applicant told the informant that he will perform second marriage and threatened the informant to withdraw the case; (ii) that the applicant has not cooperated with the police; (iii) that her *streedhan* was yet to be recovered and as such there was a breach of the condition of the anticipatory bail. The dispute is between the applicant and the complainant, who are husband and wife. After observing in para 8 of the order dated 31st October, 2015-

“I have perused the FIR and the statement of informant. The applicant and informant residing separately since last two years. Nowhere in FIR the descriptions of streedhan articles or details have been given or no statement is made that applicant is in possession of the any articles, belongings of informant. Considering the nature of offences, the offences are registered under sections 498(A), 406, 328, 509, 377 r/w section 34 of IPC against applicant. Therefore, ad-interim anticipatory bail granted to the applicant is fit to be confirmed.....”,

there was no justification to observe in the order dated 24th January, 2017, that *streedhan* is yet to be recovered and that the applicant was in breach of the condition i.e. he had not co-operated with the police. There is

nothing on record to show, that from January, 2016, till date, the applicant had either threatened the complainant or intimidated her. In these facts, there was no justification for the learned Judge to cancel the anticipatory bail of the applicant in 2017.

8. Accordingly, the order dated 24th January, 2017 passed by the learned Sessions Judge in Miscellaneous Application No. 128 of 2015 is quashed and set-aside and the earlier order dated 31st October, 2015, is restored to the file.

9. Application is allowed and is accordingly disposed of.

10. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.