

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 905 OF 2017

Dr. Shailesh Mishra

...Applicant

Versus

The State of Maharashtra and anr.

...Respondents

Mr. Samarth S. Karmarkar for the applicant

Mr. Sameer P. Nangre i/b Rupesh R. Lanjekar for Respondent No.2

Mr. V.V. Gangurde, APP for the State.

PSI Rekha Saykar Police Station Borivali.

CORAM: A.M. BADAR, J.

DATED: 12th OCTOBER, 2017

PC:-

1. The applicant accused in Crime No.147 of 2017 registered at the instance of his wife Shweta Mishra for offences punishable under Sections 498-A, 406, 323, 504, 506, 509 r/w 34 of the Indian Penal Code, by this application is seeking pre-arrest bail.

2. Heard the learned advocate for the applicant/accused. He argued that the applicant and his family members, from time to time paid an amount of Rs.29 lakh to father of the first

informant for purchasing a flat, as he is doing business as builder and developer. Reliance is placed on statement of the accounts annexed to the application. It is argued that the First Information Report is lodged by the first informant as her father could not give possession of the apartment or in the alternative the deposited the amount.

3. As against this, the learned APP submitted that the First Information Report itself shows that the married woman is subjected to cruelty by the applicant as well as co-accused by subjecting her to severe beating after demanding huge amount of Rs.3 crores from her. The learned advocate appearing for the respondent No.2/the first informant drew my attention to the affidavit filed by the first informant as well as photographs annexed thereto in order to demonstrate that the first informant was subjected to beating by the present applicant. Reliance is also placed on medical certificates. He argued that the First Information Report itself

depicts 18 instances of beating the first informant by the present applicant.

4. The relevant consideration in the instant case is whether custodial interrogation of the present applicant is warranted or not. So far as the '*stridhan*' is concerned, the averements are to the effect that gold ornaments belonging to the first informant are taken by the co-accused, who happens to be mother-in-law of the first informant. So far as the present applicant is concerned, allegations are to the effect that he used to beat the first informant repeatedly by demanding money from her. It is alleged that the present applicant was asking his wife to bring an amount of Rs.3 crores from her parents in order to enable him to establish a hospital. On this count, he was repeatedly beating the present applicant.

5. The offence alleged is matrimonial in nature. Apart from Section 498-A, what is invoked is section 323 of the Indian

Penal Code, which is a bailable offence. So far as the present applicant is concerned, there is no question of recovery from him as averments in the First Information Report shows that the '*stridhan*' was taken by the mother-in-law. Bank statements annexed to the application *prima facie* shows that from the year 2012 there used to be transfer of certain sum of amount to the account of father of the first informant as well as the firm name 'Kamdhenu Developers', which is reported to be belonging to the father of the first informant.

6. In this factual backdrop, considering the nature of offence and anticipating chances of reconciliation in future, I am of the considered opinion that custodial interrogation of the present applicant is not warranted. Earlier he had been directed to attend the police officer for the purpose of investigation. It is not reported that he has breached the said condition. Purpose of investigation would be served by directing the applicant to attend the investigators for the purpose of the investigation. Hence, the following order:

ORDER

- (i) The application is allowed.
- (ii) The order dated 24th May 2017 is confirmed on same terms and conditions. In addition, the applicant is directed to attend the investigation officer as and when directed by the investigating officer for the purpose of investigation by written notice.
- (iii) As a condition of this order, the applicant / accused shall not directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case, so as to dissuade him from disclosing such facts to the court or to the Police Officer.
- (iv) The application is disposed of accordingly.

(A.M. BADAR, J)