

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

ANTICIPATORY BAIL APPLICATION NO. 1573 OF 2016

1) Mohammed Mustafa Sheikh	
2) Mrs. Ayesha Mustafa Sheikh	
3) Mr. Mukhtar Mustafa Shaikh	.. Applicants
Versus	
The State of Maharashtra	.. Respondent

Ms. M.J. Reena Rolland for the Applicants.

Ms. R.M. Gadhvi, A.P.P for the State.

CORAM :- SMT. SADHANA S. JADHAV, J.

DATED :- 9th JANUARY 2017.

PC. :-

1 The applicants herein being aggrieved by the order dated 03.05.2016 passed by the Sessions Judge, Mumbai, thereby vacating the relief granted in favour of the present applicants, has filed the present application. It appears from the records that on 07.06.2015 the complainant Rukhsar Shaikh lodged a report at the Police Station. Applicant Nos.1 and 2 happened to be the in-laws of the complainant whereas the applicant No.3 is the brother in-law of the complainant.

2 It is the case of the prosecution that on 07.06.2015 the complainant lodged a report at the police station alleging therein that she has got married to the son of the present applicant Nos.1 and 2 on 04.05.2014. She was residing in a joint family. Her husband was working at Dubai. On the very third day of marriage, her husband

had informed her that he dislikes her and had left India on 26.05.2014 for Dubai. She had later on learnt that her husband had a love affair with another woman viz. Shamin. According to the complainant she was harassed and ill-treated by the present applicant and there was a demand of Rs.2 lakh, That her husband had borrowed an amount of Rs.2 lakh from her mother on the promise that he would return it soon after he returns from Dubai. According to her, she had conceived pregnancy. Her mother in-law i.e applicant No.2 had disclosed that the husband of the complainant was not in India and therefore, it could not be child of her son. The complainant has given several instances of harassment and ill-treatment. On the basis of which Crime No.347 of 2015 was registered at Malvani Police Station against the applicants and others. The applicants were granted protection by the learned Sessions Court, The complainant had given application seeking cancellation of the same relief on the ground that she and the other witnesses are being threatened by the present applicants and hence by an order dated 03.05.2016 the learned Sessions Judge had allowed the said application and recalled the order granting pre-arrest bail.

3 The learned counsel for the applicant has drawn the attention of this Court to the sonography report dated 05.01.2015 which indicates that the complainant was pregnant of about seven weeks and five days. Taking into consideration the nature of allegations and the fact that the applicant Nos.1 and 2 are the in-laws of the complainant and the applicant No.3 is brother in-law. The

applicants deserve pre-arrest bail. The order dated 03.05.2016 deserves to be quashed and set aside.

4. Reliance can be placed on the judgment of the Hon'ble Apex Court in the case of *Arnesh Kumar vs. State of Bihar* (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 I.P.C. 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 In view of the guidelines issued by the the Hon'ble Apex Court, this Court is of the opinion that the applicants deserve pre-arrest bail. This Court is inclined to confirm the interim relief granted in favour of the applicant vide order dated 08.09.2016 on same terms and conditions.

6 The observations are restricted to an application under section 438 of Cr.P.C. and shall not be taken into consideration for the purpose of quashing of F.I.R., discharge application or at the time of trial.

ORDER

- (i) The application is allowed.
- (ii) In the event of arrest of the applicants in C.R. No.I-347 of 2015 registered with Malvani Police Station, the applicants shall be released on bail on his furnishing PR. Bond of Rs.10,000/- (Rupees Ten Thousand only) each with one or two solvent local sureties in the like amount.
- (iii) The applicants shall not tamper with the evidence and/or influence the prosecution witnesses.
- (iv) The Application stands disposed of.

(SMT. SADHANA S. JADHAV, J.)