

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.663 OF 2015

Ms. Sandhya Gaurav Malik
alias Hans

.....Applicant

Versus

Mrs. Kamlesh Jagdish Malik
& Ors.

.....Respondents

Mr. Vikas Singh, Advocate for Applicant.

Mrs. G.P.Mulekar , APP for Respondent-State.

CORAM : SANDEEP K. SHINDE, J.

DATE : July 3, 2017.

P.C. :

It is an application for cancellation of anticipatory bail granted to respondent nos.1 to 3 in Crime No.254 of 2015 registered at Oshivara Police Station for the offences punishable under Sections 498-A, 420, 406, 467, 468, 323, 324, 504, 506 read with Section 34 of the IPC. Respondent no.1 is mother-in-law , respondent no.2 is sister-in-law and respondent no.3 is brother-in-law of the applicant, eventually the respondent nos.1 to 3 before this Court. Yet another accused in the said crime is husband of the applicant, whose

name is Gaurav Jagdish Malik. He was not afforded protection by the learned Sessions Judge. He was arrested and after remanding him to the police custody for some days, he was released on bail. Respondent Nos.1 to 3 were granted anticipatory bail vide order dated 16.9.2015 passed by the learned Additional Sessions Judge in Anticipatory Bail Application No.1943 of 2015. Respondent Nos.1 to 3 are residents of Surat, Gujarat.

2 The applicant got married with Gaurav Malik who is son of respondent no.1 in June, 2005. Out of the said wedlock, a son was born. After the marriage, applicant, her husband and respondent no.1 (mother-in-law) were residing together at Surat. Admittedly, sister-in-law and brother-in-law are living separately and not in the matrimonial house of the applicant. In June, 2015, the applicant lodged complaint alleging that her husband and in-laws were harassing her to meet unlawful demands and for non-fulfilment of same causing physical harassment to her. She would also allege that respondent nos.1 to 3 misrepresented about academic and financial status of her husband. The said complaint was lodged when she was residing at her parents house at Mumbai. In

supplementary statement dated 13.6.2015, she alleged that her husband forged her signature and without her consent mortgaged her house property with bank and availed loan of Rs.20 Lakhs. She further alleged that for repaying said loan, he further availed second loan from L & T Bank, Ring Road at Surat in a sum of Rs.36 Lakhs and at that time also forged her signature. She would further allege that she was shown as co-borrower without her consent and knowledge. In the circumstances, she was forced to sell her flat. In the course of these events, he was frequently assaulting her. On this set of facts, she alleged that husband has committed the offence of forging valuable security.

3 Apprehending the arrest, husband, mother-in-law, brother-in-law and sister-in-law of the applicant preferred an application for anticipatory bail. The learned Judge refused to grant anticipatory bail to the husband. Others were afforded protection vide order dated 16.9.2015. The learned counsel for the applicant urged that liberty afforded to the respondent nos.1 to 3 has been misused by them in a sense that on the very day on which they were released on bail, she had received threats in the name of her husband from one mobile

which is stated in the complaint.

4 The learned counsel has brought to my notice complaint dated 16.9.2015 as well as complaint dated 17.9.2015 filed by the applicant with Navsari Rural Police Station and Umra Police Station at Surat respectively. Perused both the complaints. In the first complaint, it is alleged that while she was travelling from Surat to Valsad at Vesma National Highway one Maruti van pushed her car which had broken the glass of the rear side of the car. In the said complaint, she reported to the police that call was received from no.2232237938 in the name of her husband Gaurav and threats were extended to her. Yet in another complaint dated 17.9.2015, she reported to Umra Police Station that she had received calls from two numbers whereby she was threatened to withdraw the complaints. On the basis of these two complaints, the learned counsel for the applicant urged that liberty has been misused by the respondent nos. 1 to 3.

The learned counsel has brought to my notice another complaint filed by the applicant in December, 2015 addressed to Women Cell at Gujarat against her husband Gaurav Malik wherein she has alleged that her husband was trying to

kidnap her son.

It may be stated that Anticipatory Bail Application of Gaurav Malik was rejected by the learned Sessions Judge. This complaint does not indicate that any of the respondents before me have misused the liberty granted to them by the learned Judge while affording the protection.

Another contention of the learned counsel for the applicant is that the learned Judge while granting anticipatory bail to the respondent nos.1 to 3 has overlooked the allegation of forgery and, therefore, on this count also, the order is liable to be recalled and protection afforded to the respondent nos.1 to 3 be revoked.

5 I have perused the FIR. First statement dated 1.6.2015 and supplementary statement dated 13.6.2015. Allegations of forgery are in the supplementary statement recorded 10 days after the FIR. Be that as it may, allegations in the FIR are mainly against the husband.

6 After going through the relevant documents and perusing the two complaints filed by the applicant with Surat Police Station, in my view, contention of the applicant that the

respondent nos.1 to 3 have misused the liberty cannot be accepted. Both the complaints do not show that alleged threats were at the instance of respondent nos.1 to 3. The first complaint would say that phone call was received in the name of husband. Save and except bare words in the complaint, no other material is placed on record to show that respondent nos.1 to 3 had misused the liberty granted to them.

In so far as non-consideration of the allegations of forgery while granting anticipatory bail is concerned since such allegations are against the husband and that too in supplementary statement. In fact, there was no occasion for the learned trial Court to deal with the allegations of forgery vis-a-vis respondent nos.1 to 3 and record the finding.

7 The learned counsel for the applicant has relied on the judgment of the Supreme Court in **Mehboob Dawood Shaikh v. State of Maharashtra** reported in (2004) 2 SCC 362. I have gone through the said judgment. In the very judgment, reference has been made to judgment in the case of **Raghubir Singh v. State of Bihar** wherein it is stated that bail granted under Section 437(1) or (2) or under Section 439(1) can be cancelled where (i) the accused misuses his

liberty by indulging in similar criminal activity, (ii) interferes with the course of investigation, (iii) attempts to tamper with evidence or witnesses, (iv) threatens witnesses or indulges in similar activities which would hamper smooth investigation, (v) there is likelihood of his fleeing to another country, (vi) attempts to make himself scarce by going underground or becoming unavailable to the investigating agency, (vii) attempts to place himself beyond the reach of his surety etc. These grounds are illustrative and not exhaustive. It must also be remembered that rejection of bail stands on one footing but cancellation of bail is a harsh order because it interferes with the liberty of the individual and hence it must not be lightly resorted to.

Yet another judgment relied on is in the case of **State of Bihar v. Rajballav Prasad** reported in 2017(1) Bombay C.R. (Cri) 9 wherein it is held that “*it is correct to say that unless it is found that discretion exercised by the Court while granting the bail was exercised on extraneous consideration and/or passed by ignoring relevant material, the Court would normally not interfere with any such orders. Unless there are cogent and overwhelming circumstances, interference has not called for.*” In **State of Bihar (Supra)**,

in paragraph 14, the Hon'ble Supreme Court observed thus:

“The present case falls in the former category as the appellant is not seeking cancellation of bail on the ground that the respondent misconducted himself after the grant of bail or new facts have emerged which warrant cancellation of bail. That would be a case where conduct or events based grant of bail are to be examined and considered. On the other hand, when order of grant of bail is challenged on the ground that grant of bail itself is given contrary to principles of law, while undertaking the judicial review of such an order, it needs to be examined as to whether there was arbitrary or wrong exercise of jurisdiction by the Court granting bail. If that be so, this Court has power to correct the same.”

8 Keeping in mind law laid down by the Supreme Court on a issue of cancellation of bail and upon taking into consideration the facts in the case in hand, in my view, respondent nos.1 to 3 have neither misused the liberty nor indulged in similar criminal activities. They have not interfered with the course of investigation. They have not tampered with the prosecution evidence or witnesses. There is no likelihood of their being fleeing away to another country.

They also have not indulged in the activities which has hampered investigation. Not a single incident was brought to my notice by the learned APP to hold that respondent nos.1 to 3 have misused the liberty. That the allegations made in the two complaints lodged with Surat Police Station do not indicate phone calls or such other allegations were at the behest of the respondent nos.1 to 3.

9 That even otherwise, respondent nos.2 and 3 are living separately and not in the matrimonial house of the applicant. Neither FIR nor supplementary statement suggests that respondent nos.1 to 3 were parties to the alleged forgery. In my view, there is no substance in the application. Consequently, application is rejected and disposed of accordingly.

(SANDEEP K. SHINDE, J)