

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.2004 OF 2017

PANDURANG KARANDE

)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA

)...RESPONDENT

Mr.Sachin Hande, Advocate for the Applicant.

Ms.Anamika Malhotra, APP for the Respondent – State.

Ms.Vaishali Chavan, Assistant Police Inspector, Amboli Police Station.

CORAM : A. M. BADAR, J.

DATE : 17th NOVEMBER 2017

P.C. :

1 The applicant/accused in Crime No.143 of 2016 registered with Amboli Police Station, Mumbai, for offences punishable under Sections 498A, 377, 406 read with 34 of the Indian Penal Code (IPC), at the instance of his wife Puja Pandurang Karande, by this application, is seeking pre-arrest bail.

2 Heard finally with consent of parties.

 The learned advocate appearing for the applicant/accused submitted that the First Information Report (FIR) lodged by Puja is by way of counter-blast to the legal proceedings initiated by the applicant/accused. He argued that the applicant/accused had sent legal notice to the First Informant in June 2015 and thereafter, in the year 2015 itself, he had filed a petition for divorce against the First Informant, which is pending in the court of Civil Judge, Senior Division, at Panvel. The learned advocate further drew my attention to the report of non-cognizable case lodged against the First Informant by his brother.

3 The learned APP drew my attention to the FIR as well as statement of witnesses recorded during investigation, to submit that apart from subjecting his wife to cruelty, the applicant/accused has also indulged in having carnal intercourse with her against the order of the nature. The learned APP further informed that the investigation is over and the charge-sheet against the co-accused has already been filed.

4 I have carefully considered the rival submissions and also perused the case diary including statements of Shraddha, Malan, Siddhu etc. I have also perused report of medical examination of the First Informant. It is seen that the First Informant married the present applicant/accused on 24th Jan 2011 and out of this wedlock, she is having a son aged about 5 years. Married life of the First Informant saw a rough weather, as seen from her FIR. She alleged that the present applicant/accused used to force her to indulged in carnal intercourse against the order of nature. The applicant/accused was having love relation with a lady named Sapna, whom he wanted to marry. The FIR further averred that after consuming liquor, the applicant/accused used to abuse her and beat her. She started residing with the applicant/accused separately at Kopralli from 2013 and when she went to her parental house, the applicant/accused did not allow her to come back by telling that he has shifted the room. On 15th April 2014, the applicant/accused came to the house of her father and attempted to take custody of his son Aditya. She, therefore,

lodged report against the present applicant/accused and also filed an application before the concerned court. That is how, she again procured custody of her son. The FIR further averred that she had been to her matrimonial house at Solapur in August 2015, but at that time she was assaulted. The applicant/accused is threatening her with a divorce, by informing her that he has already married another woman. She heard voice of second wife of the applicant/accused in a telephonic call. This is the summary of allegations against the present applicant/accused, as reflected from the FIR as well as statements of witnesses.

5 It is seen that during the course of investigation, the First Informant was subjected to medical examination but she refused to undergo some part of medical examination. It is also seen that the Medical Officer, after recording history of the carnal intercourse against the order of nature against the First Informant, has observed that there are no external marks of injury found on the person of the First Informant.

6 It is seen that the present applicant/accused, through his advocate, issued a legal notice dated 29th June 2015 alleging cruelty and informing the First Informant that he is going for divorce. It is also seen that the present applicant/accused had filed petition for divorce bearing no.259 of 2015 which is pending in the competent court at Panvel. Report of non-cognizable case dated 22nd August 2015 is in tune with averments of the First Informant in her FIR but it shows that brother of the present applicant/accused has alleged that feeling angry because of service of legal notice on her, the First Informant abused and threatened the family members and the present applicant/accused. Then, it is seen that the FIR came to be lodged on 14th April 2016.

7 Considering the events which took place in past, prior to lodging the FIR, as borne from the record, and considering the fact that the offence alleged is a matrimonial offence, of which investigation is over, custodial interrogation of the present applicant/accused is not warranted. As such, the order :

ORDER

- i) The application is allowed.

- ii) In the event of arrest in Crime No.143 of 2016 registered with Amboli Police Station, Mumbai, for offences punishable under Sections 498A, 377, 406 read with 34 of the IPC, the applicant / accused shall be released on bail on his executing PR.Bond in the sum of Rs.15,000/-, and on furnishing surety in like amount.

- iii) The applicant / accused shall not tamper with the prosecution evidence.

- iv) 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.

v) The applicant / accused shall attend the concerned Police Station on 24th November 2017 and 28th November 2017 between 11.00 a.m. and 1.00 p.m. till filing of the charge-sheet, and shall co-operate the Investigator in the investigation of the crime. In addition, he should also attend the concerned police station, as and when required by the Investigating Officer for the purpose of investigation.

vi) The application is disposed of.

(A. M. BADAR, J.)