

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

ANTICIPATORY BAIL APPLICATION NO. 2230 OF 2017

Aishwarya @ Snehal Vasant Phalke. ... Applicant.
Versus
The State of Maharashtra. ... Respondent.

**WITH
ANTICIPATORY BAIL APPLICATION NO. 2237 OF 2017**

Vasant Narhari Phalke. ... Applicant.
Versus
The State of Maharashtra. ... Respondent.

Mr. Dnandeo D. Shinde, advocate for applicant in ABA 2230/17.

Mr. Anil Shitole, advocate for applicant in ABA 2237/17.

Mr. S.H. Yadav, APP in ABA 2230/17.

Ms. Anamika Malhotra, APP in ABA 2237/17.

Mr. H.M. Bhangale, PSI, Solapur Rural.

**CORAM : SMT.SADHANA S. JADHAV,J
DATE : DECEMBER 22, 2017**

P.C.:

1 Heard the learned Counsel for the applicants and the learned
APP for State.

2 These are the applications under section 438 of the Code of Criminal Procedure, 1973. The applicants herein are apprehending their arrest in Crime No. 476 of 2017 registered at Pandharpur Police Station for the offence punishable under section 306, 498A, 323, 504, 506, read with section 34 of the Indian Penal Code.

3 It is the case of the prosecution that the applicant Aishwarya @ Snehal Phalke, applicant in ABA 2230/17 is the daughter of the applicant Vasant Phalke in ABA 2237/2017. It is the case of the prosecution that brother of Aishwarya was married to Chaitali on 18/12/2014. That the couple is blessed with a daughter namely, Aradhya. That on 12/7/2017 Chaitali committed suicide by hanging in her matrimonial house. On 13/7/2017 father of Chaitali lodged a report at the police station alleging therein that his daughter was married to Abhijit on 18/12/2014. That at the time of marriage, he had offered several gifts to his daughter, besides Rs. One lakh towards dowry and 25 grams of golden jewellery. It is the case of the

prosecution that Abhijit was running small garage and automobile shop. He was desirous of taking a mangal karyalay on rent and therefore, there was a demand of Rs. 50,000/- from the parents of Chaitali. It is also alleged that there were some differences between mother-in-law and the daughter-in-law. That the father-in-law had extended Rs. 60,000/- and Rs. 80,000/- to Abhijit on two different occasions. That there was a complaint of Chaitali that one day when she was ill, she was not taken to hospital by her husband. It was therefore, alleged that being harassed by Abhijit and his mother Shobha Vasant Phalke, his daughter Chaitali had committed suicide by hanging. That Abhijit was arrested soon after the first information report was lodged. That on 20/7/2017 supplementary statement of the complainant was recorded in which there are allegations against the father-in-law i.e. the applicant in ABA 2237/17 and Aishwarya who happens to be the sister of Abhijit as well as Vishwajit who happens to be the brother of Abhijit.

4 That Abhijit and Vishwajit are in custody. The application filed by mother-in-law i.e. Shobha under section 438 of the Code of Criminal Procedure, 1973 has been rejected by this Court vide order dated 21/8/2017.

5 The respective Counsel for the parties have made their submissions. It is contended that the applicant Aishwarya has graduated as Engineer and for one year prior to the incident she was at Pune and was appearing for competitive examination. It is also submitted that applicant Vasant Phalke is working as accountant in Public Works Department of State of Maharashtra. It is highly educated family except Abhijit and that they had not harassed Chaitali by any means.

6 In the course of making submission, the learned Counsel Mr. Shitole who appears for the applicant Vasant has vehemently submitted that the deceased Chaitali had graduated from Ferguson College, Pune. That her husband had only passed Higher Secondary

School Certificate Examination and was running small garage and automobile shop but had made very effort to keep her happy. It was an arranged marriage. The economic condition of her maternal family is sound and therefore, Chaitali was unhappy with her matrimonial life. It is also fairly submitted that there is no doubt that the amount of Rs. 60,000/- and Rs. 80,000/- was received by Abhijit. However, it was only towards an extension of financial aid and not dowry. That Abhijit has every intention to return the said amount after his economic condition had improved. It is therefore, submitted that receiving of the said amount shall not be assumed to be dowry in any manner.

7 The respective Counsel submits that the dowry has to be differentiated from taking aid and as son-in-law he must be accept the same. However, the applicant Aishwarya was prosecuting her education and she had no occasion to ill-treat or harass Chaitali as she was residing at Pune whereas Chaitali was residing with her family at Pandharpur. It is true that the prospectus of applicant Aishwarya

would be at stake in the eventuality that the application is rejected. Similarly, the applicant Vasant Phalke was working as accountant and was attending his official duty and therefore, has no occasion to harass his daughter in law. It is submitted that the family members are arraigned as an accused as a matter of formalities and are being prosecuted under section 498A and 306 of the Indian Penal Code.

8 In the case of **Arnesh Kumar v/s. State of Bihar (2014) 8 SCC 273**, it is 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 IPC 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 cast 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.”

9 It is in the facts of the case that the applicants deserve to be granted pre-arrest bail.

10 The above observations are prima facie in nature and restricted to the application under section 438 of the Code of Criminal Procedure, 1973. The learned Trial Court shall not be influenced by the same at the time of hearing the application for quashing of FIR or discharge or at the time of trial.

11 Hence, the following order is passed.

ORDER

i) The applications are allowed.

- ii) In the event of arrest, the applicants be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 25,000/-each and one or more solvent sureties in the like amount.
- iii) The applicant Vasant Phalke shall report to the concerned police station as and when called.

12 The applications are disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)