

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION(ABA) 659 OF 2017

(Satish S/o Rameshlal Premchandani and others..vs..The State
of Maharashtra, through PSO.PS.Jaripatka,Nagpur.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Shri S.P.Sonwane, Advocate for applicants.
Shri Indranil Damle, A.P.P. for State-non-applicant
with Shri S.G.Karmarkar, Advocate (assist to
prosecution)

CORAM : V.M.DESHPANDE, J.
DATED :SEPTEMBER 21, 2017

Heard learned counsel for applicant and learned
A.P.P. for State who is assisted by learned counsel Shri
S.G.Karmarkar who has filed an application to assist the
prosecution on behalf of the complainant.

2] According to applicants, the marriage of applicant
no.1 Satish S/o Rameshlal Premchandani was performed with
Kirti who is daughter of one Rajkumar Sawlani, the complainant
on 12/5/2003. Said Kirti after her marriage started residing at
Dantewada,Chattisgarh in her matrimonial place. From her
wedlock she delivered twin daughters in the year 2004. On
5/11/2016, Kirti committed suicide. A report was lodged by
complainant Rajkumar Tolaram Sawlani with P.S.Bhansi in
Chattisgarh State. On the basis of which an offence was
registered against the applicants for the offence punishable
under Sections 498-A,306,34 of the Indian Penal Code. It is also

submitted by the learned counsel for the applicants that during the investigation of the said crime, complainant preferred a writ petition before the High Court of Chattisgarh for transferring the investigation to Central Bureau of Investigation. However, according to his submissions on 18/4/2017 the High Court of Chattisgarh dismissed the writ petition on the ground that the offence is already registered and it is being investigated by the authority of P.S.Bhansi. It is also reported to this Court by learned A.P.P. that as on today chargesheet in the said offence for Sections 498-A,306,34 of the Indian Penal Code is not filed before the Court of law.

3] Application under Section 156(3) of the Code of Criminal Procedure was filed by the complainant in the Court of learned Judicial Magistrate First Class,(Court No.7),Nagpur against the present applicants in which the present applicants were shown as proposed accused persons. The learned Magistrate on 30/6/2017 passed a detailed order and thereby directed police station officer of P.S.Jaripatka to register F.I.R. on the basis of complaint and proceed in accordance with law. It appears that said order was not challenged by the present applicants.

4] In pursuance to the directions given by the learned Magistrate the F.I.R. bearing No.410/2017 is registered with P.S.Jaripatka ,Nagpur for the offence punishable under Sections 406,415,420,34,120-B of the Indian Penal Code and Sections 3,4 and 7 of Dowry Prohibition Act. The applicants are apprehending their arrest in connection with the same therefore, they are before this Court.

5] According to learned counsel for applicants, the texts of the complaint lodged before P.S.Bhansi (C.G.) and F.I.R. which is ultimately registered against the present applicants at P.S.Jaripatka,Nagpur are identical one and same. Therefore, he submits that the F.I.R. is nothing but an attempt to wreak vengeance against the applicants. Therefore,he submits that the applicants be released on anticipatory bail.

6] Per contra, learned A.P.P. vehemently opposed the application for anticipatory bail by filing detailed report. In the reply, it is specifically pointed out that for the purpose of investigation and inquiry the summonses were given by the investigating officer to the applicants and in spite of receipt of said summonses which were served upon the applicants either by registered post or by hand delivery they failed to follow the course as stated in those summonses. It is also pointed out that when the investigating officer had been to Dantewada(C.G.) for the purpose of investigation that time, the present applicants were found to be absconding. In that behalf, it is submission of learned counsel for the applicants that when the police station officer from P.S.Jaripatka visited at Bhansi on the said day the applicants had been to Nagpur for swearing affidavits.

7] It is also pointed out by learned A.P.P. that the applicants had already filed an application under Section 482 of the Code of Criminal Procedure before this Court for quashment of the F.I.R. which is registered in pursuance to the directions given by the learned Magistrate,Nagpur. Therefore, he submits that the present application is not maintainable.

8] I am afraid that such arguments can be entertained. The quashment of the F.I.R. is altogether different thing, claiming anticipatory bail is a statutory right granted in favour of the applicants under Section 438 of the Code of Criminal Procedure. Therefore, said submissions made on behalf of the learned A.P.P. stand rejected.

9] However, to a pointed query made by this Court to the learned counsel for applicants about the receipt of the summonses given by the investigating officer is that the applicants received summonses both by hand delivery and under registered post. The learned counsel for applicants was unable to furnish or submit any explanation as to why the applicants did not obey the directions.

10] The investigating officer is empowered to call a person to assist the investigating officer for investigating the matter when a cognizable offence is registered. Therefore as a duty, the applicants were expected to attend the police station and join investigation. Further, it is also not disputed for and on behalf of the applicants by the learned counsel for the applicants that when the investigating officer was at Bhansi none of the applicants were found at their ordinary place of residence. The explanation is that the applicants were at Nagpur for swearing affidavits.

11] The F.I.R. discloses serious accusations against the applicants. Further the applicants i.e. specifically applicant nos. 1,2 and 3 are not entitled for any discretionary relief because they have a tendency and inclination to avoid the course of law. In so far as applicant nos. 4,5 and 6 are concerned they are

ladies. Normally, in the Indian society when the husband is there it would not be expected from the wife to attend the police station in pursuance to the summons. Further, learned A.P.P. was unable to point out any specific reason for custodial presence of these ladies. Therefore, this Court is inclined to grant anticipatory bail in favour of the applicant nos. 4 to 6 . That leads me to pass the following order.

ORDER

- I) Application is partly allowed.
- II) The application of applicant no.1 Satish Rameshlal Premchandani, applicant no.2 Ajay @ Ajju S/o Rameshlal Premchandani and applicant no.3 Amar @ Bablu S/o Rameshlal Premchandani is hereby rejected.
- III) The application of applicant no.4 Muskan W/o Ajay @ Ajju Premahcnadani, applicant no.5 Rashi W/o Amar @ Bablu Premchandani and applicant no.6 Sangita Wd/o Rameshlal Premchandani is hereby allowed. In the event of their arrest in connection with Crime No. 410/2017 registered with P.S.Jaripatka ,Nagpur for the offence punishable under Sections 406,415,420, 120-B,34 of the Indian Penal Code and Sections 3,4 and 7 of Dowry Prohibition Act, they be released on bail on they executing P.R.Bond of Rs. 25,000/- by each of them

with one solvent surety in the like amount by each of them .

- IV) The application to assist the prosecution is also allowed.

JUDGE

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