

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL ANTICIPATORY BAIL APPLICATION NO.396 OF 2018

1. Mrs.Seema Harish Nagal, Age 33 years,
2. Harish Trilok Nagal, Age 35 years,
both residing at Flat No.305, `B' Wing,
3rd floor, Shiv Parvati CHS Ltd;
Raheja Township, Malad (East),
Mumbai-400 097.

Applicants

versus

1. The State of Maharashtra.
2. Jagruti Girish Vyas, Age 27 years,
R/o.B-104, Shri Vishal Complex,
Narsing Lane, Malad (W), Mumbai-64.

Respondents

WITH

CRIMINAL ANTICIPATORY BAIL APPLICATION NO.397 OF 2018

1. Deepchand Navnitlal Vyas, Age 59 years,
2. Rani Deepchand Vyas, Age 52 years,
Both r/o.Flat No.2004, Tower No.1,
Tipco Heights, Rani Sati Marg,
Malad (East), Mumbai-400 097.

Applicants

versus

1. The State of Maharashtra.
2. Jagruti Girish Vyas, Age 27 years,
R/o.B-104, Shri Vishal Complex,
Narsing Lane, Malad (W), Mumbai-64.

Respondents

WITH

CRIMINAL ANTICIPATORY BAIL APPLICATION NO.398 OF 2018

Girish Deepchand Vyas, Age 29 years,
Occ.Service, R/o.Flat No.2004, Tower No.1,
Raheja Tipco Heights, Rani Sati Marg,
Malad (East), Mumbai-400 097.

Applicants

versus

1. The State of Maharashtra.
2. Jagruti Girish Vyas, Age 27 years,
R/o.B-104, Shri Vishal Complex,
Narsing Lane, Malad (W), Mumbai-64.

Respondents

Mr.Nilesh Tribhuwan I/by Mr.Suhail Shariff for applicants in three applications.

Mr.Vivek Pandey for respondent no.2.

Ms.A.A.Takalkar, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 5th September 2018

PC :

1. These are applications for anticipatory bail. The applicants are apprehending arrest in connection with CR No.538 of 2017 registered with Dindoshi Police Station for offences under Sections 498A, 406, 323, 504, 506 of Indian Penal Code. The applicants preferred application for anticipatory bail before Sessions Court which was rejected. The FIR was registered on 17th July 2017. The applicant no.1 in Anticipatory Bail Application No.396 of 2018 ('ABA') is sister in law of the complainant and applicant no.2 is the husband of applicant no.1 therein. The applicants in ABA No.397 of 2018 are father-in-law and mother-in-law of the complainant. The applicant in ABA No.398 of 2018 is the husband of complainant.

2. The case of prosecution is that marriage between the complainant and the applicant in ABA No.398 of 2018 was solemnized on 19th November 2013. Prior to marriage, engagement ceremony was performed on 28th June 2012. The expenses were incurred by the father of complainant. The complainant was continuously harassed by the applicants-accused. Demand of Rs.10 lakh was also made. It is also alleged that Stridhan aggregating to 2,942.106 grams of gold ornaments and 1,545 grams of silver ornaments were withheld by the applicants. The complainant was

physically and mentally harassed. Although sister-in-law of complainant (applicant no.1 in ABA No.396 of 2018) was married to applicant no.2 of the said application, they had stayed in the matrimonial home of complainant and harassed the complainant. It is further alleged that the father of complainant had gifted 100 sarees valued at Rs.1.50 lakh and had also given Rs.3 lakh to husband of complainant and also incurred marriage expenses. The complainant's father had gifted gold ornaments of 236.445 gms and silver ornaments of 150 gms to husband of complainant and relatives in the marriage. Complainant's relatives had gifted her ornaments. The complaint provides the list of ornaments given during marriage as Stridhan to the complainant. All the accused have abused and mentally harassed the complainant. The father-in-law of the complainant had demanded Rs.20 lakh to be given by the complainant from her parents. The father of complainant was helpless on account of harassment caused to the daughter, gave amount of Rs.20 lakh. It is further alleged that from December-2013 to 23rd June 2017 the complainant was ill-treated by all the accused by abuses, threats, assault and demanded Rs.10 lakhs and they have misappropriated the gold ornaments weighing 2,942.106 grams of gold ornaments and 1,545 grams of silver ornaments. On 29th March 2015 the complainant fell sick due to pressure. Her husband and in-laws did not admit her in hospital. Her parents admitted her in hospital. The accused pressurized her to leave part time job and education. Father-in-law had demanded Rs.20 lakhs to purchase new house. The complainant and relatives shifted in another flat in the same building where they were residing in November-2015. She was also harassed at that place. The complainant lodged complaint with State Woman Commission on 28th September 2016. On 23rd

June 2017, when the complainant went to meet her husband, he told her that she should bring Rs.10 lakhs from her father, otherwise, she should not come to matrimonial home.

3. Pursuant to the registration of FIR, the applicants preferred anticipatory bail application before the Sessions Court. The application was opposed by the State. It was contended that all the accused were responsible for commission of the said crime. On 30th July 2017, police went to the house of applicants along with complainant for recovery of Stridhan but they could recover only 25% of the Stridhan and the remaining ornaments are yet to be recovered. The learned Sessions Judge rejected the said application on 22nd February 2018.

4. Learned advocate for applicants submits that the allegations made in the FIR are totally false. The applicants have not committed any offence. The entire family has been implicated in this crime. The applicant no.1 in ABA No.396 of 2018 is married with the applicant no.2 of the said application. However, she has been roped in this case. The applicants in ABA No.397 of 2018 are senior citizens who are unnecessarily dragged in the complaint. The applicants had co-operated with the investigation and even handed over whatever articles lying at the matrimonial home, which were recovered by recording panchanama. It is submitted that the custodial interrogation of the applicants is not necessary. The applicant in ABA No.398 of 2018 has been implicated being the husband of complainant. No specific overt act has been attributed to him. It is further submitted that there is no proof of the ornaments which are purportedly required to be recovered at the instance of applicants.

The complainant has falsely alleged that the ornaments are lying with the applicants. In view of the recovery effected by the investigating officer, the custody of the applicants is not necessary. The complainant had left her matrimonial house on several occasions. She had left the matrimonial house in September-2016 and the complaint was filed in July-2017. Thus, there is inordinate delay in lodging the FIR. The dispute arises out of matrimonial discord and in view of the nature of dispute, the applicants cannot be subjected to custody.

5. Learned APP submitted that the complainant has referred to the nature of harassment caused to her by all the accused-applicants. The FIR attributes specific overt act of harassment which amounts to cruelty to the complainant. All the accused have jointly committed the alleged acts. The investigating officer could recover only 25% Stridhan and the remaining property is yet to be recovered. The applicants-accused are not ready to hand over the remaining valuable property. If the applicants are released on anticipatory bail, there is possibility that they would dispose off the property. The father in law of the complainant had demanded Rs.20 lakhs from complainant and she was meted with ill-treatment. The father of the complainant was required to arrange Rs.20 lakh which was paid to the father-in-law of the complainant. The said amount is yet to be recovered. Although the applicants in ABA No.396 of 2018 are having separate residence, they used to stay in the house of the complainant's matrimonial home. They had also subjected the complainant to insults and physical and mental harassment. It is thus submitted that the anticipatory bail applications preferred by the applicants be rejected.

6. Learned counsel for intervenor/first informant has also opposed the grant of reliefs prayed in this applications. He has adopted the submissions advanced by learned APP. The complainant has also filed affidavit opposing the applications for anticipatory bail. The affidavit reiterates the version of the complainant as spelt out in the FIR. In addition to that, the complainant has placed on record along with said affidavit the photographs of the complainant which were taken during solemnization of the marriage, which according to the complainant shows the ornaments on her person. The affidavit also refers to other photographs of the jewellery gifted to the complainant during marriage. The bills relating to purchase of the ornaments are annexed to affidavit. The medical certificate of the medical prescriptions are also part of the said affidavit. It is contended by the intervenor that the gold was worth Rs.80 lakhs. What is recovered is small portion of the ornaments and other property is yet to be recovered. The accused are withholding Stridhan worth more than Rs.60 lakhs. The accused are in process of disposing off the said Stridhan.

7. I have perused the documents on record. I have also gone through the FIR and the orders passed by Sessions Court rejecting the applications for anticipatory bail. It is stated that the marriage was solemnized between the parties in the year 2013. The FIR indicates that the complainant was being harassed by the accused. It is alleged that the applicants in ABA No.396 of 2018 were also residing with the complainant. It is also apparent that during the course of investigation, only 25% of Stridhan was recovered. The FIR, however, refers to several other ornaments and the list of which

is referred thereto. The photograph to the affidavit-in-reply also indicates the nature of ornaments which were gifted to the complainant as Stridhan. The investigating officer has recorded search panchanama on 12th November 2017 and they have recovered certain ornaments. However, according to the investigating officer as well as complainant, the other ornaments are yet to be recovered and they have expressed apprehension that in the event of grant of anticipatory bail, the said ornaments would be sold. The first informant has also alleged that Rs.20 lakhs were demanded by the father-in-law and considering the nature of harassment meted out to the complainant, the father of complainant was constrained to part with the said amount to the father-in-law. It is also the case of complainant that huge expenses were incurred during the marriage. The gift articles were also provided to the husband as well as cash of Rs.3 lakh. The nature of allegations made are serious and it is apparent that recovery of entire ornaments is yet to be made. However, considering the fact that applicant no.1 in ABA No.396 of 2018 is the married sister-in-law and applicant no.2 is her husband, and since they have already attended police station, their custody is not required. Even mother-in-law who is applicant no.2 in ABA No.397 of 2018 being and considering the factual aspects, can be granted protection of anticipatory bail. The recovery of all the ornaments is required to be effected. The applicant in ABA No.398 of 2018 is the husband of complainant, who had meted out the harassment to the complainant. Demand of Rs.20 lakh was made by applicant no.1 in ABA No.397 of 2018 and the said amount is given by the father of complainant as alleged in the FIR. Considering the apprehension expressed by the prosecution, the details of ornaments furnished in affidavit-in-reply filed by the complainant, nature of

allegations spelt out in the FIR, no case for grant of anticipatory bail is made out in respect to the applicant no.1 in ABA No.397 of 2018 and applicant in ABA No.398 of 2018.

8. In the circumstances, I pass following order :

ORDER

- (i) Criminal Anticipatory Bail No.396 of 2018 is allowed;
- (ii) The application of applicant no.1 in Criminal Anticipatory Bail Application No.397 of 2018 Mr. Deepchand Navnitlal Vyas is rejected. However, application of applicant no.2 in ABA No.397 of 2018 is allowed;
- (iii) Criminal Anticipatory Bail Application No.398 of 2018 preferred by Girish Deepchand Vyas, stands rejected;
- (iv) The interim order dated 5th March 2018 passed in favour of applicants in Criminal Anticipatory Bail Application No.396 of 2018, applicant no.2 in Criminal Anticipatory Bail Application No.397 of 2018 is confirmed;
- (v) In the event of arrest of applicants in Criminal Anticipatory Bail Application No.396 of 2018 and applicant no.2 in Criminal Anticipatory Bail Application No.397 of 2018, they shall be released on bail on furnishing PR bond in the sum of Rs.15,000/- each with one or more sureties in the like amount;
- (vi) The applicants in Criminal Anticipatory Bail Application No.396 of 2018 and applicant no.2 in Criminal Anticipatory Bail Application No.397 of 2018 shall report the investigating officer of Dindoshi Police Station, Mumbai as and when called.

9. At this stage, learned advocate for applicants submits that the applicants who are declined anticipatory bail, intend to move Hon'ble Supreme Court of India challenging this order. The applicants were protected by interim order vide order dated 5th March 2018 which is continued till today. It is prayed that the said order be extended for four weeks. Considering the request made by learned advocate for applicants, interim protection granted on 5th March 2018 is continued for a period of four weeks in respect of applicant no.1 in Criminal Anticipatory Bail Application No.397 of 2018 and applicant in Criminal Anticipatory Bail Application No.398 of 2018.

(PRAKASH D. NAIK, J.)

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