

Nalawade

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 176 OF 2014

Farheen Mohd. Iqbal Lakha vs. Danish Samad Mithani & anr.

Office Notes, Office Memorandum of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's order
--	--------------------------

Ms. Mirsad Fakih i/by Rizwan Merchant & Associates for the Applicant.

Ms. P.N. Dabholkar, APP. for the State.

Ms. Misbah Solkar i/by Amin Solkar for Respondent No.1.

CORAM :A.S.GADKARI, J.

DATE : 17th January, 2018

P.C.

1. This is an application for cancellation of bail granted to the applicant by the learned Additional Sessions Judge, Greater Mumbai by its order dated 11.4.2014 in Bail Application No.877 of 2014.

2. Heard the learned counsel for the applicant, the learned counsel for respondent No. 1 and the learned APP. Perused the record annexed to the application.

3. The applicant was the wife of respondent No.1. At the instance of the applicant CR No.84/2014 under Section 376, 498A and 406 of the Indian Penal Code has been registered with Pydonie Police Station, Mumbai. The respondent No.1 was

arrested on 9.3.2014 and after completion of investigation the police have submitted charge sheet. The learned Additional Sessions Judge by the impugned order dated 11.4.2014 was pleased to release the applicant on bail. The learned counsel appearing for the applicant submitted that as a matter of fact the respondent No.1 had given divorce to the applicant on 21.8.2013 and even thereafter she was detained in the matrimonial house till 30.9.2014 and during the said period the respondent No.1 had committed an act as contemplated under Section 376 of the Indian Penal Code. She further submitted that the Trial Court has erred in recording a finding in Para 5 of the impugned order that offence under Section 498A of the I.P.C. cannot be said to be grave and serious offence so as to require the detention of the applicant in Jail. She submitted that the finding of the Trial Court is perverse and requires to be quashed. She therefore, prayed that the impugned order may be quashed and set aside and the bail granted to respondent No.1 be cancelled.

3. Ms. Solkar vehemently opposed the application and submitted that, the learned Trial Court has committed no error while releasing the respondent No.1 on bail. She submitted that

as a matter of fact the applicant was a consenting party to the alleged act as contemplated under Section 376 of the Indian Penal Code. She further submitted that despite pronouncing divorce, the applicant did not leave the matrimonial house and continued to stay there at her own will. She further submitted that the prosecution has not made out any case as contemplated under Section 406 of the Indian Penal Code, therefore, the Trial Court was pleased to grant bail to the applicant. She therefore, prayed that the present application may be rejected.

4. It is a matter of record that though the respondent No.1 divorced the applicant on 21.8.2013 she continued to stay at her matrimonial house till 30.9.2014. It prima facie appears that during the said period there had been physical relationship between the applicant and respondent No.1. It is therefore, prima facie difficult to accept the allegation under Section 376 of the I.P.C. Section 406 has been added to the present crime along with Section 498A of the I.P.C. with an allegation that the husband/Respondent No.1 did not return the property of the applicant and has misappropriated it. It is to be noted here that respondent No.1 was arrested by the police in the present crime on 9.3.2014 and the police have thoroughly interrogated

him when he was in custody. Assuming that some of the ornaments or other stridhan could not be recovered at his instance, it cannot be a ground at this stage to cancel his bail. The impugned order is passed on 11.4.2014. It is submitted by the learned counsel for the respondent No.1 that the Trial Court has already scheduled the case of framing of charge on 8.2.2018.

5. After perusing the record, this Court is of the view that, the learned Trial Court has taken into consideration the various aspects of the matter and has passed the impugned order and it does not suffer from any error either in law or in facts.

6. Application is accordingly rejected.

(A.S.GADKARI, J.)