

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 1179 OF 2017

Imran Mohd. Shaikh ...Applicant.
vs.
The State of Maharashtra ...Respondent.

Mr. Ashish Dubey for the Applicant.
Mr. Bhati i/by Bhati Associates for the Applicant in Appln. No.395/2017 and Respondent No.2 in ABA No.1179/2017.
Mr. Ram Upadhye and Dharmesh Singh i/by Law Competere Consults for Respondent Nos. 1 to 4 in Appln No.395/17.
Mr. A.A.Palkar, APP for the State.

CORAM :A.S.GADKARI, J.
DATE : 14th February, 2018

1. This is an application under Section 438 of the Cr. P. C. for pre-arrest bail in CR No. 273/2017 dated 8.6.2017 registered with Santacruz Police Station, Mumbai under Section-498(A), 406, 323, 504, 506 read with 34 of the Indian Penal Code.

2. The first information report is lodged by Smt. Sabera Imran Shaikh wife of the applicant. It is stated that the marriage of the first informant and the applicant was solemnized on 18.5.2016. That, her father had spent a sum of Rs.14.00 lakhs for her marriage. Immediately after the next day of the marriage, her mother-in-law directed the first informant to give all ornaments in her custody. That, the applicant and other in

laws thereafter started passing sarcastic comments against the informant stating that the father of the informant gave them articles like beggar. That, the applicant started demanding one motor cycle for himself. That, the applicant and her other in laws constantly used to harass her and caused cruelty to her. It is stated that even though the informant was pregnant, her in laws used to force her to do the household work. It is stated that, on 17.12.2016, the applicant and other in laws of the informant asked her to give all the ornaments and leave the place and to go to her parents' house. It is stated that, on 18.12.2016, after a religious ceremony, the accused persons removed all the ornaments from the person of the informant and send her for delivery to her parents house. It is further stated that the applicant and other accused persons used to demand Rs.7.00 lakhs for starting new business. She has categorically stated in the first information report that, the applicant constantly used to demand Rs.7.00 lakhs and for non fulfilling the said demand used to cause cruelty to her. That, on 14.3.2017 the informant was at her parents house, the applicant and her in laws came there to see her daughter and assaulted the informant and therefore a separate crime bearing CR No.193/2017 has been registered with Santacruz Police

Station, Mumbai. It is alleged that the applicant has committed criminal breach of trust of the ornaments and other articles of the informant approximately amounting to Rs.22.00 lakhs. The list of the ornaments and other articles are mentioned in the first information report itself. In the premise, the first information report is lodged.

3. Heard the learned counsel for the applicant at length, learned counsel for the first informant and the learned APP. Perused the record of investigation.

4. The learned counsel appearing for the applicant submitted that the first information report cannot be accepted as gospel truth as it suffers from various contradictions and exaggerations. He further submitted that as a matter of fact the informant is in custody of the various ornaments of the applicant. He further submitted that the applicant has been falsely implicated in the present crime. He further submitted that the allegation of the retention of the said ornaments is an exaggerated version of the informant and the same cannot be taken into consideration. He submitted that in CR bearing No.193/2017 the first informant and her father did not mention any of the facts as mentioned in the present crime and therefore, the narration of facts mentioned in the present

crime is an after thought . He further submitted that, after grant of interim relief by this Court the applicant has attended the Investigating Officer on several occasions and therefore his custodial interrogation is not necessary. He therefore, prayed that the applicant may be granted pre-arrest bail.

The learned counsel for the Respondent No.2 and the learned APP vehemently opposed the application.

5. At the out set, it is to be noted here that the first information report is self eloquent and at this stage requires no further corroboration. A useful reference at this stage can be made to the decision of the Supreme Court in the case of *Vadivelu Thevar vs. The State of Madras* reported in AIR 1957 S.C. 614 wherein the Supreme Court has enumerated three categories of witnesses namely i) wholly reliable ii) wholly unreliable iii) neither wholly reliable nor wholly unreliable. The statement made by the first informant appears to be wholly reliable and inspires confidence in the mind of this Court. Prima facie it further appears that it is the applicant who has committed the offence under Section 406 of the I.P.C. which is cognizable non bailable offence and for recovery of the articles mentioned in the first information report the custody of the applicant is necessary.

6. As far as contention of the applicant that he has attended the Investigating Officer after grant of interim relief on various occasions is concerned, the Supreme Court in the case of State Rep. by the C.B.I. vs. Anil Sharma reported in (1997) Supreme Court Cases (Cri.) 1039 has held that, custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well ensconced with a favorable order under Section 438 of the Code. In a case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual.

8. In view of the above and after taking into consideration the serious allegations against the applicant and the gravity of the offence, this Court is of the view that the applicant does not deserves to be protected by pre-arrest bail.

9. Application is accordingly rejected.

10. At this stage the learned counsel for the applicant submitted that the interim relief granted to the applicant may

further be extended with a view to enable the applicant to approach the Hon'ble Supreme Court. The learned counsel for respondent No.2 vehemently opposed the prayer. After taking into consideration the serious allegations against the applicant and for the reasons stated herein above, the said prayer is rejected.

(A.S.GADKARI, J.)