

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

ANTICIPATORY BAIL APPLICATION NO.1510 OF 2018

Kiran Dilip Wagh		Applicant
<u>Vs.</u>		
The State of Maharashtra		Respondent

Mr. Alankar Kirpekar a/w Mr. Sagar Kasar a/w Mr. Murlidhar Khadilkar I/by MAG Legal for the Applicant.

Mr. Y.Y. Dabake, APP for the State.

Coram : *Smt. Sadhana S. Jadhav, J.*
Date : *30th July, 2018*

P.C.:

1 Heard the learned counsel for the applicant and the learned APP.

2 This is an application under Section 438 Code of Criminal Procedure. The applicant herein is apprehending his arrest in Crime No.75 of 2018, registered at Ambad Police Station, Nashik on 15th February, 2018, for the offences punishable under Sections 377 and 406 of the Indian Penal Code and Section 18 of Protection of Women from Domestic Violence Act, 2005.

3 The complainant in the present case happens to be the wife of the present applicant. The applicant is serving in Merchant Navy. The complainant happens to be the second wife of the present applicant as the first wife for reasons best known to her had committed suicide. The applicant herein has been acquitted in the said case. It is a matter of record that the complainant is not residing with the applicant since 21st September 2017.

4 On 24th October 2017, the complainant had filed an application in the Family Court under Section 9 of the Hindu Marriage Act seeking restitution of conjugal rights. In fact, it is alleged in the said petition also that the applicant happens to be an alcoholic and was soliciting unnatural sex from the complainant. It is also alleged that they had earlier approached the police station. Thereafter she had been to reside with the applicant. However, his demand continued.

5 It further appears that the allegation made in the application under Section 9 of the Hindu Marriage Act and the first information report on the basis of which Crime No. 75 of 2018 is registered are para-materia same. Despite that the complainant has contended before the Family Court that she still desires to continue with marital life with the present applicant. It is further pertinent to note that the said application is filed after she had withdrawn from the society of the husband. The complainant had also filed proceeding under the Protection of Women from Domestic Violence Act, 2005 before the Magistrate at Nashik, which is registered as Domestic Violence Application No.1551 of 2017.

6 Learned counsel for the applicant submits that in wake of aforesaid mentioned facts, the applicant herein had approached the Family Court and has filed a petition under Section 13(1)(ia) of the Hindu Marriage Act, 1955 seeking divorce on the ground of cruelty and desertion. It is, in these circumstances and taking into consideration the fact that there are more than two proceedings pending between the parties interse and that the applicant is

working with Merchant Navy and rarely resides at the given address, the applicant deserves pre-arrest bail.

7 However, the observations are restricted to application under Section 438 of the Code of Criminal Procedure, 1973 and shall not be taken into consideration for the purpose of quashing of FIR, discharge application or at the time of trial. Hence, the following order is passed :

ORDER

- i) The application is allowed.
- ii) In the event of arrest, the applicant be enlarged on bail on furnishing P.R. bond in the sum of Rs.50,000/- with one or more solvent sureties in the like amount.
- iii) The applicant shall report to the concerned police station from 8th August 2018 to 11th August 2018 everyday from 10.30 am. to 1.00 pm. and co-operate the investigating agency.

(*Smt. Sadhana S. Jadhav, J*)