

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL ANTICIPATORY BAIL APPLICATION NO.2179 OF 2018

1. Vijaykumar Nandlal Kukreja,
Age 34 years,
2. Nandlal Pessuram Kukreja,
Age 60 years,
3. Smt.Jasota Nandlal Kukreja,
Age 58 years,
4. Chello Nandlal, Age 35 years,
5. Mrs.Maahi Chello Kukreja, Age 32 years,
All R/o.Pee Jay, Block No.A-701/1402,
Hirapuri Chowk, Behind Netaji School,
Ulhas Nagar-421 005.

Applicants

versus

The State of Maharashtra

Respondent

Mr.Ashok M. Saraogi for applicants.

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

Mr.Avinash Kaldade, Police Inspector and A.V.Jadhav, Ulhas Nagar
Police Station, present.

CORAM : PRAKASH D. NAIK, J.

DATE : 26th October 2018

PC :

1. This is an application for anticipatory bail in connection with CR No.I-219 of 2018 registered with Central Police Station, Ulhas Nagar for offences under Section 498A, 354, 406, 500, 501, 504, 506, 509 r/w Section 34 of Indian Penal Code read with Sections 66, 66(e) and 67 of Information Technology Act. The FIR was registered on 31-7-2018.

2. The prosecution case is that the marriage between the complainant and the applicant no.1 was solemnized on 12-11-2017.

The applicant no.1 is the husband of complainant. The applicant nos.2 and 3 are the father-in-law and mother-in-law of the complainant, whereas, applicant no.4 is the brother-in-law and applicant no.5 is wife of applicant no.4. It is alleged that since 7-1-2018 the complainant is residing with her parents. She is working in State Bank. She was subjected to harassment. In the marriage the complainant's father had given ornaments valued at about Rs.12.60 lakh. The accused started demanding ornaments. The complainant was given several ornaments as stri-dhan. The conduct of the accused was objectionable. The brother-in-law of the complainant had outraged her modesty. The wife of brother-in-law abused her and separated her husband. The accused no.1 (applicant no.1) had clicked her photographs. The applicant no.1 had forwarded several messages which were defamatory. The messages were forwarded by forming a whatsapp group of which the applicant no.1 was the administrator and the persons to whom the messages were forwarded, an impression was given that the complainant is having relationship with another person. The messages were circulated amongst members of meditation group. The FIR was lodged for the aforesaid offence on 31-7-2018. The applicants prefer application for anticipatory bail before the Sessions Court which has been rejected as far as applicants are concerned and two persons were granted anticipatory bail.

3. Learned counsel for applicants submitted that the version of the applicant in complaint is concocted. There are no previous complaints. The allegations are vague. The date of incident of outraging modesty is not specified in the FIR. The complainant had left for matrimonial home on 31-7-2018. It is further submitted that

prior to registration of the FIR, the applicants had lodged complaint with police on 23-5-2018 and 30-5-2018. It is submitted that on 24-6-2018 NC complaint was lodged at the instance of applicants with police. It is submitted that the relationship between the applicants and the complainant was cordial at the initial stage which is borne out by the photographs which are annexed to the application. However, the conduct of the complainant was objectionable and on account of her acquaintance with third person, there were disputes between the parties. The applicant nos.2 and 3 are senior citizens and they are ailing. The entire family has been dragged into the criminal prosecution. Merely on account of forwarding the messages, the applicants cannot be subjected to custody. He has relied upon the photographs and call details as well as chats of the complainant with the third person. It is submitted that during pendency of the application for anticipatory bail before the Sessions Court, interim protection was granted to them and they have co-operated with the investigating officer. It is submitted that the applicant no.1 is willing to deposit the amount without prejudice to their rights and contentions to the extent of value of ornaments which are allegedly retained by accused no.1 (applicant no.1). It is further submitted that the applicant no.1 had offered to surrender his cell phone which was not accepted by the investigating officer. The matter relates to matrimonial discord and custodial interrogation of the applicants is not necessary.

4. Learned APP submitted that serious role is attributed to the applicants. The complainant was continuously subjected to harassment. The accused had also indulged in outraging modesty of the complainant. The complainant's father has spent huge amount

on ornaments which were given to the complainant. The recovery of property is yet to be made. The applicants did not co-operate with the investigation. During the course of investigation evidence is collected by police which shows the complicity of applicants. It is submitted that prior to registration of FIR, the complainant had forwarded written complaint. The statements of witnesses indicate that the applicant no.1 had forwarded several whats app messages and objectionable photographs. The statements of witnesses recorded during the investigation supports the case of complainant. It is further submitted that the applicant no.1 did not hand over his cell phone although he was requisitioned to do so. It is not simple case of matrimonial discord. The nature of allegations is required to be taken into consideration. It is thus prayed that the application may be rejected.

5. I have perused the FIR, documents annexed to this application and investigation papers pointed out by learned APP. The marriage of applicant no.1 and the complainant was solemnized as stated above on 12-11-2017. Admittedly there were disputes between the parties within the short span of time. The complainant was subjected to harassment as alleged in the FIR. It is alleged that on one day the father-in-law and brother-in-law had outraged her modesty. The brother-in-law had repeated the said act again. He was supported by his wife and other persons of family. It is further alleged that the conduct of accused no.1 was highly objectionable. the father-in-law and brother-in-law were trying to frequently touch her inappropriately. The FIR also indicate that the ornaments to the tune of Rs.12.60 lakh were retained by the accused. According to the prosecution, the said articles are yet to be recovered. During the

course of investigation statements of several witnesses were recorded. The applicant no.1 had posted several whats app messages which were objectionable in nature. The same were circulated amongst whats app group. According to the complainant, the said act has caused mental disturbance to her. The messages were sent repeatedly maligning her character. The applicant nos.2 and 3 are the father-in-law and mother-in-law and applicant no.4 is brother-in-law and applicant no.5 is wife of applicant no.4. In the FIR although it is alleged that applicant no.2 and applicant no.4 had committed act amounting to outraging her modesty, the FIR does not specify the date of incident. There is no previous complaint with regards to the said allegation. Primarily serious allegations are attributed to applicant no.1. The prosecution intends to recover property. Looking into the nature of allegations and the evidence corrected by prosecution, case of grant of anticipatory bail to applicant no.1 is not made out. However, for the reasons stated above, applicant nos.2 to 5 can be granted protection u/s 438 of Cr.P.C. The property as alleged can be recovered by custodial interrogation of applicant no.1 and the custody of other accused is not necessary. Investigation conducted by police corroborates the complaint vis-a-vis role played by the applicant no.1.

6. Hence, I pass following order :

ORDER

- (i) Criminal Anticipatory Bail Application No.2179 of 2018 as far as applicant no.1 is concerned, is rejected;
- (ii) Applicant nos.2 to 5 are granted bail; and in the event of arrest of applicant nos.2 to 5 in connection with CR No. I-219 of 2018

registered with Central Police Station, Ulhas Nagar, they 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;

(iii) The applicant nos.2 to 5 shall report the investigating officer of Central Police Station, Ulhas Nagar as and when called for;

(iv) The applicants shall not tamper with the evidence;

(v) Criminal Anticipatory Bail Application No.2179 of 2018 is disposed off with above directions.

7. At this stage learned counsel for applicants states that applicant no.1 would consider approaching higher Court challenging this order and seeking relief u/s 438 of Cr.P.C. It is submitted that applicant no.1 was granted interim protection by the Sessions Court and hence applicant no.1 be protected from arrest for a period of three weeks. Taking into consideration the submission, the applicant no.1 may not be arrested for a period of three weeks from today.

(PRAKASH D. NAIK, J.)

MST