

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO.1329 OF 2019
CONVERTED WRIT PETITION NO. 1273 OF 2019
WITH APPLN/1271/2019

Seema Pawan Chaudhari,
Age 29 years, Occu. Household,
R/o. G Sector Plot No. G-52,
N-4, CIDCO, Aurangabad.

.. Applicant

VERSUS

- 1 State of Maharashtra
Through Pundliknagar Police Station,
Aurangabad.
- 2 Police Commissioner,
At the Office of Commissioner,
Aurangabad.
- 3 Sayyad Sidhique,
Investigation Officer, Aurangabad.
- 4 Pawan Dayanand Chaudhari,
Age 35 years, Occu. Business,
R/o. Plot No. 118, Murlipur, Jaipur,
Rajasthan.
- 5 Dayanand Shivnarayan Chaudhari,
Age 60 years, Occu. Business,
R/o. Plot No.118, Murlipur,
Jaipur, Rajasthan.
- 6 Saba Kaur Dayanand Chaudhari,
Age 52 years, Occu. Business,
R/o. Plot No.118, Murlipur,
Jaipur, Rajasthan.
- 7 Rajbala Sanjay Shavran,
Age 40 years, Occu. Household,
R/o. Plot No. 118, Murlipur,
Jaipur, Rajasthan.

.. Respondents

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Mr. R. F. Totala h/f. Mr. R. A. Karwa, Advocate for Appellant.
Mr. A. S. Shinde, Advocate for Respondent No.1.

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**CORAM : T.V. NALAWADE &
K. K. SONAWANE, JJ.**

DATED : 18th JULY, 2019.

ORAL JUDGMENT :-**(PER : T. V. NALAWADE, J.)**

Permission is granted to convert the present application to Writ Petition. New number is to be given in the place of Application No. 1329 of 2019.

2. Rule. Rule made returnable forthwith. Heard finally, with consent of learned counsels for the parties.

3. The present proceeding is filed for relief of direction to respondent of following nature :-

“B. To appoint any Independent Investigation Officer from Local Crime Branch under the Supervision of Police Commissioner, Aurangabad for proper Investigation in the Crime No. 331 of 2018 registered at Pundliknagar Police Station, Aurangabad.

C. The Respondent No.2 Police Commissioner be directed to conduct an enquiry of Respondent No.3 for his Incomplete and illegal Investigation.

4. Learned counsel drew attention of this Court towards copy of First Information Report and submit that in the month of September-2018, on one day when the informant and her husband were present in the matrimonial house alongwith their kid, in the evening, the husband had prepared two plates for dinner and immediately after ten minutes of taking dinner, she felt giddy and so she went to bed. It is the contention of first informant that when she woke-up, she was having severe headache and she realized that her clothes were not in proper

condition on her person. When she asked her husband as to why she was feeling giddy, he replied that, it may have happened due to excessive sleep. It is contention of first informant that she felt that conduct of her husband was not usual and there was some difference in his conduct. It is contention of first informant that, on the next day, when she inquired with her husband about incident of the previous day, he showed photographs taken by him in his camera and they were her nude photographs taken when she was sleeping on the bed. It is contention of the first informant that the husband told her that he had administered intoxicating substance to her on previous night and due to that she had become unconscious and when she went to sleep, he took her nude photographs. By showing her photographs, he gave threats of defamation her and under such threat he obtained her signatures on two blank stamp papers. It is contention that she was compelled to put her name on bond paper by husband and she was compelled to put fake signatures of mother and father also on the bond papers. She did it and after that there was cohabitation of few days. Then, as per other contention, on 25-09-2018, the husband beat her on account of she made phone call to her parents and he locked the informant in a room, from where she was rescued by the police. The charge-sheet is filed only for the offence punishable under Sections 498-A and 323 read with Section 34 of the Indian Penal Code (IPC). On the basis of aforesaid FIR, crime could have been registered under Section 328 of IPC, and also it can be said that the FIR could have been registered for the offence punishable under Section 294 of IPC and Section 66-E of the Information Technology Act, 2000 (IT Act).

5. When there were allegations of aforesaid nature, it

appears that the husband was not arrested. In view of these circumstances, this Court expressed that the Court will have to direct the Investigating Officer to register the offence under Sections 328 and 294 of IPC and Section 66-E of IT Act. On queries, learned APP made submission in support of steps taken by the Investigation Agency. Learned APP submits that in view of provision of Section 41 and 41-A of the Code of Criminal Procedure, 1973 (Cr.P.C.), there was an ample power to the Investigating Officer to take decision of no arrest.

6. This Court has carefully gone through the provisions of Section 41 and 41-A of Cr.P.C. Section 41 of Cr.P.C. describes the powers of police officer to arrest a person without warrant in cognizable offence but there is division of offences. *It provides that, a Police Officer may without an order from a Magistrate and without a warrant arrest a person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence punishable with imprisonment for a term which may be less than seven years or which may extent to seven years on the conditions are prescribed. Thus, subject to such restriction, Investigating Officer can arrest the accused without warrant. Similarly, Section 41-A of Cr.P.C. provides that the Police Officer shall in all cases, where the arrest of a person is not required under the provisions of Sub-section (1) of Section 41 of Cr.P.C., issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice.*

7. For the offence punishable under Section 328 of IPC, the imprisonment period is provided upto 10 years. Further, the other offences mentioned above were also alleged. When the offences are of aforesaid nature, custodial investigation is must. If the photographs of the aforesaid nature were taken, in ordinary course, steps ought to have been taken by the Investigating Officer to see that the photographs are recovered taken in custody. That action needs to be taken in the interest of victim and that material can be used as evidence. As the Investigation Officer did not take such steps, it creates doubt about the fairness of investigation and only it is clear that there he avoided to collect such material. Though, the chargesheet is filed, process of investigation continues and such investigation is possible in view of Section 173 (8) of Cr.P.C.

8. In view of aforesaid circumstances, this Court holds that direction needs to be given as prayed in the present proceedings, so that, the investigation is handed over to some other Investigation Officer so that he collects the material which ought to have been collected.

9. Submissions made shows that the charge-sheet is filed. Till this date, the husband has not applied for bail or anticipatory bail. The chargesheet shows that notice was given to all the accused and there is such mention in the charge-sheet. This circumstance shows that they are not on bail. If they are not on bail, there is no necessity to issue notice to them to show the change of the offence and addition of aforesaid offence, if the investigation agency wants to make investigation for the offences punishable under Sections 294 and 328 of IPC and 66-E of I.T.Act.

10. In the result, the Writ Petition is allowed in terms of prayer clause 'B' and 'C'. Rule is made absolute in those terms.

11. List the proceedings filed by applicants bearing Criminal Application No. 1271 of 2019 only when there is record of appearance or surrender of the applicants. Submission made shows that the chargesheet is filed, but no bail or anticipatory bail obtained by the applicants.

Sd./-

[K. K. SONAWANE]
JUDGE

Sd./-

[T.V. NALAWADE]
JUDGE

rrd.