

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

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 45 OF 2019

Hanzala Rafi Momin & Ors.	...	Applicants
V/s.		
The State Of Maharashtra	...	Respondent

**WITH
CRIMINAL APPLICATION NO. 171 OF 2019
IN
CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 45 OF 2019**

Shiba Hanzala Momin	...	Intervenor
<u>In the matter between</u>		
Hanzala Rafi Momin & Ors.	...	Applicant
V/s.		
The State Of Maharashtra	...	Respondent

Ms.Aisha Ansari for Applicants in ABA/45/2019.

Mr.D.S. Mhaispurkar a/w. Mr.S.M. Mangaonkar for Intervenor in APPP/171/2019.

Mr.R.M. Pethe, A.P.P. for Respondent-State.

CORAM : A.S. GADKARI, J.

DATE : 3rd April 2019.

P.C. :

1] This is an application under Section 438 of the Code of Criminal Procedure for pre-arrest bail in connection with C.R. No. I-233

of 2018 registered with Nizampura Police Station, District Thane, for the offence punishable under Section 498(A), 323, 504, 506 read with Section 34 of the Indian Penal Code.

2] Heard the learned counsel for the applicants, the learned counsel for the intervenor and the learned APP for the State. Perused the record of investigation.

3] By an Order dated 9th January 2019 the applicants were granted interim relief.

The learned counsel for the applicants submitted that the applicants have not committed any crime. She further submitted that, Section 498(A) of the Indian Penal Code is not applicable to the present crime, as the informant was not residing with the applicants since long. She submitted that, on the date of lodgment of the present crime, the informant had been to matrimonial house and created ruckus and therefore, a non cognizable offence has been registered by the applicant No.1 husband. She submitted that the first informant is desirous of seeking divorce by “Khula” as per the Islamic religion and as the applicant No.1 did not accede to the said request, the present crime is registered.

The learned counsel for the applicants, therefore, prayed that the applicants may be protected by pre-arrest bail by allowing the present application.

4] Perusal of the record would indicate that, the statement of the minor daughter of applicant No.1 and informant has been recorded by the learned Judicial Magistrate First Class, 5th Court, Bhiwandi, District Thane, under Section 164 of the Criminal Procedure Code. In the said statement, specific roles are attributed to the applicant No.1 husband, applicant No.2 mother-in-law and applicant No.3 father-in-law of the first informant. The incident of assault which took place on 30th November 2018 has been elaborately mentioned therein. The allegation of assault by applicant Nos.1, 2 and 3 is further corroborated by the medical certificate issued by Indira Gandhi Memorial Hospital, Bhiwandi in favour of the informant.

5] The fact of administration of stupefying substance from juice to the informant is further corroborated by the analysis of her urine sample conducted at Hinduja National Hospital, Navi Mumbai. The learned APP, on instructions submitted that the chemicals which were found in the urine sample of the informant are components of the

medicines used in the treatment of insomnia. He further on instructions submitted that, as per the investigation carried out till today, it is disclosed that the informant was not suffering from such an ailment. As noted earlier, finding of certain chemicals in the urine sample of the informant further lends credence to the statement of the daughter of the applicant No.1 and the informant. It is further stated in the said statement that, in the said assault the applicant No.2 had removed two bangles made up of gold from the hands of the informant. That after the lady police appeared at the scene of offence, the said assault and commotion stopped.

6] Thus, there is *prima-facie* sufficient material available on record to show the clear complicity of the applicant Nos.1 to 3 in the present crime. The learned APP, on instructions, submitted that the police are in process of adding certain additional sections to the present crime in view of the statement given by the daughter of the applicant No.1 and the medical report received from Hinduja Hospital, Navi Mumbai.

7] It is to be noted here that, as far as the applicant Nos.4 to 7 are concerned, a passing reference pertaining to the alleged role played

by them is made in the first information report and other statements available on record. In view of the ratio laid down by the Hon'ble Supreme Court in the case of *Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273, the applicant Nos.4 to 7 are, therefore, entitled to be protected by pre-arrest bail.

8] For the reasons stated here-in-above, the applicant Nos.1 to 3 do not deserve for protection by way of pre-arrest bail and the applicant Nos.4 to 7 can be protected by pre-arrest bail.

Hence, the following order.

(A) The pre-arrest bail of the Applicant No.1 Hanzala Rafi Momin, Applicant No.2 Mrs.Sajeda Rafi Momin and Applicant No.3 Rafi Shafi Momin is hereby rejected.

(B) The application for pre-arrest bail of Applicant No.4 Human Rafi Momin, Applicant No.5 Hamza Rafi Momin, Applicant No.6 Huzaifa Rafi Momin and Applicant No.7 Mrs.Asra Sagir Ansari is hereby allowed on the following terms and conditions.

(i) In the event of arrest in connection with C.R. No.

I-233 of 2018 registered with Nizampura Police

Station, District Thane, the applicant Nos.4 to 7 shall be released on bail on their furnishing PR bond in the sum of Rs.15,000/- each, with one or two separate local sureties in the like amount.

(ii) Applicant Nos.4 to 7 shall not tamper with the evidence and/or interfere with the process of investigation.

(iii) Application is partly allowed in the aforesaid terms.

9] In view of the order passed in ABA No.45 of 2019, Criminal Application No.171 of 2019 for intervention does not survive and hence, disposed off.

[A.S. GADKARI, J.]