

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****ANTICIPATORY BAIL APPLICATION NO. 799 OF 2018**

Mohammad Swahail Shaikh

....Applicant.

Vs.

The State of Maharashtra & Anr.

....Respondents.

Dhwani Mehta I/by D.M. Law Chamber for the Applicant.

Ms. J.S. Lohokare APP, for the Respondent-State.

Mr. Mohd. Irfan Momin for the Respondent No.2-Intervenor.

CORAM : A. S. GADKARI, J.

DATE : 13th MARCH, 2019.

P.C.:-

By an Order dated 25th April, 2018, the Applicant was granted interim relief and a learned senior Advocate of this Court was appointed as a Mediator to bring an amicable settlement between the parties.

2 The Mediator has submitted her report dated 6th August, 2018 stating that, the process of mediation has failed despite several attempts made by her.

3 In this background, the present Application was heard on merits today.

Heard the learned counsel for the Applicant, the learned

counsel for the first informant/Respondent No.2 and the learned APP. Perused the record of investigation.

4 The first information report is lodged by Mrs. Arshia Sohel Shaikh, the Respondent No.2 herein.

It is the prosecution case that, the marriage of the Respondent No.2 was solemnized with the Applicant on 18th January, 2015 at Nalasopara, District Thane and thereafter the first informant started cohabiting with the Applicant at Ghatkopar (West). It is stated that in the marriage, the parents of the Respondent No.2 gifted furniture and other household articles amounting to Rs.1,85,000/- to the Applicant. That, gold ornaments amounting to Rs.5,00,000/- were given as “*Stridhan*” in the marriage. It is further stated that, cash amount of Rs.2,00,000/- was also given by the parents of the Respondent No.2 to the Applicant. It is the allegation against the Applicant that, he along with his parents used to pass sarcastic comments and taunts against the Respondent No.2. They also caused undue harassment and cruelty to her. It is stated that, the Applicant and his parents used to say that, the Respondent No.2 did not bring sufficient amount towards dowry in the marriage and a flat has also not been given to them.

The Respondent No.2 has further stated that, she was demoralized and as a consequence thereof, she suffered depression due to the various acts of cruelty caused by the Applicant and his parents. It is stated that, the process of counseling by the Authority appointed by the Police of Tulinj Police Station has also failed. That, left with no other alternative, the Respondent No.2 has filed the present crime.

5 The learned counsel for the Applicant submitted that, the receipts produced by the Respondent No.2, which are on record, are bogus receipts. She further submitted that, the alleged receipts are in fact chits exhibiting '*estimate*' given by the Jeweller and the said chits cannot be treated as receipts of purchase of ornaments. She further submitted that, the allegations made in the first information report are false and on the basis of false and frivolous allegations, the Applicant cannot be subjected to police custody for investigation. She further submitted that, the notice issued by the police under Section 41 was dropped in a letter-box which the Applicant has received. She submitted that, there is no acknowledgement by the Applicant on the said notice. She therefore, prayed that, the Applicant may be protected by pre-arrest bail by allowing the present Application.

6 At the outset, it is to be noted here that, it is the settled position of law that purpose of issuance of notice under Section 41 is to make aware to the accused about the crime registered against him and the gist of allegations mentioned therein and for calling upon him to join the process of investigation before arrest, if it is necessary for the purpose of investigation.

 In the present case, after receipt of the said notice, the Applicant attended the concerned Investigating Officer and submitted his defence, and therefore, the purpose of issuance of Section 41 notice has been served.

7 As far as the allegations made against the Applicant in the first information report is concerned, *prima facie*, there is no reason to disbelieve the statement made by the Respondent No.2 i.e. the wife of the Applicant. It appears that, the Respondent No.2 has put forth her plight which she has suffered at the matrimonial house. As per the first information report, the Applicant is in possession of the '*Stridhan*' of the first informant and the same is yet to be recovered by the police. At this stage, it is to be noted here that, taking into consideration the fact that this is a matrimonial dispute, this court had appointed a senior Advocate of this Court as a Mediator to resolve the

issues involved in this Application and other related litigation, however, the Mediator has submitted her report of failure of the Mediation.

8 As noted earlier, the police are yet to recover the property involved in the present crime. The investigation of the present crime is at a nascent stage. Unless and until the Applicant is thoroughly interrogated by the police, the investigation will not be concluded. After taking into consideration the gravity of the offence and serious allegations against the Applicant, this court is of the considered view that, the Applicant does not deserve to be protected by pre-arrest bail.

Application is accordingly rejected.

(A.S. GADKARI, J.)