

SAS

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1148 OF 2018

Chintan Yogeshbhai Kalolia ..Applicant.

V/s.

The State of Maharashtra & Anr. ..Respondents.

Mr.Shirish Gupte, Senior Advocate I/b. Viresh V.Purwant for the applicant.

Mr.M.G. Patil, APP for the respondent-State.

Mr.Abad Ponda I/b. Shailesh Kharat for respondent No.2.

CORAM : NITIN W. SAMBRE, J.

DATE : FEBRUARY 22, 2019

P.C.:-

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

2. In crime No.I-235/2018 for offence punishable under section 498(A), 377, 406, 323, 506(2) and 504 of the Indian Penal Code ('the IPC' for short) registered with Bandra police station, Mumbai, the applicant is seeking pre-arrest bail.

3. The prosecution case is, complainant Vandana,

represented through learned counsel Mr.Ponda, was married to the applicant on March 18, 2016 out of the love relations. It is claimed that the applicant and complainant remained together from March 18, 2016 till October, 2016 and after differences arose, they stayed away from each other. It is claimed that the applicant and the complainant again started residing together and continued their matrimonial relationship till September 10, 2017 and thereafter they started to reside separately.

4. Basis for matrimonial discord between the complainant and the applicant is, the allegations of demand of anal sex against the wishes of the complainant, demand of money, alcoholic habit of applicant and his family members. It is also claimed that the present applicant has threatened the complainant with aid of another woman Sonal Chawan and has removed the mangalsutra and ring, offending print messages claimed to have been sent by the applicant and his friend Sonal. Based on above allegations, crime referred supra came to be registered.

5. In the aforesaid backdrop, the submissions of Mr.Gupte, learned senior counsel is, necessary ingredients of section 498A of the IPC cannot be inferred from the plain reading

of the complaint. He has invited attention of this Court to explanation to section 498A of the IPC, particularly the word 'harassment' as referred to therein. Mr. Gupte would then urge that in any case, even if the contents of the application are taken to be true at its face value, ingredients of section 498A of the IPC are not made out. He would then urge that so far as allegation of anal sex which is punishable under section 377 of the IPC are concerned, according to him, the point of time when alleged offence claim to have been committed by the applicant and the date of filing of the complaint, in categorical terms speaks of inordinate delay. He has deride the said allegation. According to him, the medical papers which are placed on record in voluminous terms speaks that problem suffered by the complainant can be treated by the doctor and for the same, the applicant cannot be blamed. He would then urge that the applicant is a business man, having deep roots in the society and is available for the investigation. That being so, the custodial interrogation is not required.

6. Learned APP would rely upon the statement of the doctor under whose care the complainant was taking treatment.

He would also rely upon the supplementary statement of the complainant so as to demonstrate that there was matrimonial discord and Streedhan was not returned to the complainant.

7. Mr. Ponda, learned counsel for the complainant, while assisting learned APP, would take me through the entire record and submit that that the applicant has spoiled the matrimonial life of the complainant, as an alcoholic, demand for anal sex against the wishes of the complainant and treating complainant with cruelty. He would also submit that the applicant had time and again threatened the complainant in filthy words. Mr.Ponda submits that ingredients of section 498A of the IPC and allegations 377 of the IPC are very much supported by medical evidence. That being so, the demand of custodial interrogation by the prosecution is very much justified. The applicant is required to be subjected to interrogation by investigating agency.

8. Having perused the documents which are placed on record along with the application and investigation papers, what could be noticed is, the applicant and the complainant remained together upto October 2016 and thereafter, differences erupted. The applicant and the complainant have their own independent

source of income and the applicant appears to have demanded amount from the complainant time and again, as is reflected from the copy of the F.I.R. Alleged demand which is claimed to have been satisfied by the complainant, *prima facie* cannot be inferred to mean that the necessary ingredients of section 498A of the IPC are satisfied. Based on the same, it cannot be inferred that custodial interrogation of the applicant is warranted.

9. Similar appears to be position about allegations under sections 406, 506 (2), 504 and 323 of the IPC.

10. So far as the alleged offence under section 377 of the IPC is concerned, upon perusal of the medical papers, it is noticed that the complainant consulted the doctor way back in June 2016 for said ailment. The subsequent medical papers speaks of the complainant being under treatment from the doctor for treating the ailment allegedly caused because of anal sex.

10. From the certificate issued by the Dr.Aarti Shah dated April 13, 2018, it is difficult to infer that the present applicant needs to be blamed for the alleged offence punishable under section 377 of the IPC.

11. Apart from above, delay in lodging F.I.R. is not

explained though the offence claimed is of 2016.

12. Apart from above, statement of Dr.Rekha Agarwal from whom the complainant was taking treatment can be read in the interest of the complainant to mean that the medical problems faced by her can be properly treated.

13. In the aforesaid background, the fact remains that the custodial interrogation of the applicant is not warranted and justified in the facts and circumstances narrated hereinabove.

14. In the aforesaid backdrop, in my opinion, a case for confirmation of ad-interim order is made out. Hence the order :-

- i) In the event of arrest in Crime No.I-235/2018 for offence punishable under section 498(A), 377, 406, 323, 506(2) and 504 of the Indian Penal Code registered with Bandra police station, Mumbai, the applicant be released on bail on his furnishing P.R. bond of Rs.50,000/- with one or more sureties in the like amount;
- ii) The applicant shall attend the Investigating officer on 4th, 7th, 11th and 14th of March, 2019 and thereafter as and when directed;
- iii) The applicant shall furnish his permanent residential address

and contact number, including mobile number and land-line number to the investigating officer within a period of one week from today.

- iv) The applicant shall not influence the prosecution witnesses or tamper with the evidence or shall not try to establish any contact with the complainant, either through his own mobile phone or by taking recourse to any indirect mode;
- v) The applicant shall, if required, give his blood sample in case it is required in the investigation of the crime in question;
- vi) The applicant shall co-operate with the investigating agency;
- vii) The application stands disposed of accordingly.

(NITIN W. SAMBRE, J.)