

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

ANTICIPATORY BAIL APPLICATION NO.1577 OF 2019

Tabish Ibrahim Dhakam

.... Applicant

versus

The State of Maharashtra

.... Respondent

- Mr. Kuldeep S. Patil, Advocate for the Applicant.
- Mr. Y. M. Nakhwa, APP for the State/Respondent.
- Mr. Vijay Godse, PSI, Murud Police Station, Dist. Raigad, present.

CORAM : SARANG V. KOTWAL, J.

DATE : 18th JULY, 2019

P.C. :

1. The applicant is seeking anticipatory bail in connection with C.R. No.37/2019 registered with Murud Police Station, District Raigad. Initially, the offence was registered under Section 498-A, 312, 323, 504, 506 of IPC. Subsequently, Section 313 of IPC is also added.

2. The FIR is lodged by the first informant Nadia Tabish Dhakam on 4/7/2019. She has stated that she had married with

her first husband in the year 2003. Her first husband died in the year 2014 and thereafter she got married with the present applicant on 7/1/2019 at Nerul. The applicant was also married and his marriage with his first wife was subsisting. Therefore, the informant continued staying with the family of her first husband. It is her case that the applicant had promised to purchase a flat at Murud. But the applicant did not purchase any such flat as promised. In the meantime, in February 2019, the first informant became pregnant. It is her case, that the applicant did not take her to any Doctor but instead gave her some medicine. The informant consumed that medicine, after 15 days, she suffered bleeding and therefore she told the applicant to take her to a Doctor. However, the applicant did not take her to any Doctor but instead gave her medicine again. She took that medicine. Her medical condition became worse. Therefore, she went to Kalyani Hospital at Murud on 23/3/2019 and thereafter went to Tamboli Hospital. She was told by the Doctor that she had suffered abortion because she has taken some wrong medicine. Thereafter, on 1/7/2019, the informant went to the house of the applicant to

reside with him but the applicant did not allow her to enter his house. He abused and assaulted her and threw her out of his house. It is the case of the informant that the applicant was harassing her and therefore she lodged her FIR under the aforementioned sections.

3. Heard Mr. Kuldeep Patil, Ld. Counsel for the applicant and Mr. Nakhwa, Ld. APP for the State.

4. Shri. Patil submitted that the first informant never resided with the applicant therefore, there was no question of applying Section 498-A of IPC. The applicant could not have any opportunity to harass the first informant. The first informant was residing with the family of her first husband and it was not possible to disturb her in that house. He further submitted that initially offence was registered under section 312 of IPC which was a bailable offence. However, subsequently, without there being any change in the allegations, Section 313 of IPC was added just to give it a more serious colour.

5. As against this submission, Shri Nakhwa relied on the investigation carried out so far. He submitted that the statement of daughter of the first informant Zenab who was 15 years of age was recorded wherein she has stated that the applicant was harassing the first informant. The applicant had given her some medicine. The medicine was carried in a bag which contained the name of 'Sai Medical'. The investigation papers also include statement of owner of that shop. This witness has categorically denied that he had sold any medicine for termination of pregnancy to the present applicant.

6. The investigation papers do not show that the applicant had forced the present applicant to consume any medicine. On the first occasion when he had given that medicine, the bleeding had occurred after 15 days. Even thereafter, the applicant allegedly had asked her to consume medicine on second occasion. If on the first occasion the first informant had suffered because of those medicine, on the second occasion she would not have consumed those medicine. Secondly on the first occasion

also the first informant was not ill and therefore there was no reason for her to take any medicine given by the present applicant unless she was a willing party for consuming that medicine. Therefore, at this stage, there is some force in the submission of Ld. Counsel for the applicant that the informant was not forced to consume any medicine and therefore Section 313 of IPC will not be applicable. Moreover, the informant was residing in the house of her first husband with other family members. Therefore, it is improbable that applicant would enter into that house and harass the informant in front of other family members. Therefore, at this stage, the allegations appear to be doubtful. The incident of abortion had occurred in the month of March 2019 and the FIR was lodged in July 2019. In the meantime, there was no grievance made by the informant in respect of such offence. It is only after the applicant had denied her access to his house, this FIR came to be filed. Thus, at this stage, the applicant has sufficiently made out a case for protection of anticipatory bail. Hence, the following order.

ORDER

1. In the event of his arrest in connection with C.R. No.37/2019 registered with Murud Police Station, District Raigad, the applicant is directed to be released on bail on his executing P.R. Bond of Rs.25,000/- with one or two sureties in like amount.
2. The application is disposed of.

(SARANG V. KOTWAL, J.)