

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 2470 OF 2019**

Hanzala Rafi Momin
Versus
State of Maharashtra

...Applicant

...Respondent

Mr. A. R. Shaikh a/w Mrs. A.M.Z. Ansari and Mrs. Nasreen Ayubi for the Applicant

Mr. P. H. Gaikwad-Patil, A.P.P for the Respondent-State

PSI Mr. Irshad Sayyed from Nizampura Police Station, Bhiwandi, Thane City, is present

CORAM : REVATI MOHITE DERE, J.
WEDNESDAY, 18th SEPTEMBER 2019

P.C. :

1 Heard learned counsel for the parties.

2 By this application, the applicant seeks his enlargement on bail in connection with C.R. No. I-233 of 2018 registered with the Nizampura Police Station, Bhiwandi, District Thane, for the alleged offences punishable under Sections 498A, 323, 504, 506 r/w 34 of the Indian Penal Code.

3 Perused the papers. According to the complainant, she got married to the applicant on 26th November 2006. The complainant has

stated that it was a love marriage and that after marriage, her father had given Rs. 3,00,000/- to the applicant for business purpose. According to the complainant, her mother-in-law used to abuse and assault her and would ask her to bring more money from her parents. The complainant has also alleged that her sister-in-law would come to the matrimonial house during her holidays and would assault her. Pursuant to which, she left the house on 23rd March 2016 along with her daughter. The complainant has alleged that the applicant would come to her matrimonial house to meet their daughter. According to the complainant, the applicant would also assault her daughter. Pursuant to the incident dated 29th November 2018, which took place at about 11:30 p.m, the aforesaid FIR was lodged. It is alleged that on the said date, the applicant came to the complainant's maternal house to meet his daughter and asked the complainant to accompany him. She has stated that she and her daughter went with the applicant to her matrimonial house. She has further alleged that the applicant assaulted her and broke her mobile. She has further alleged that on 30th November 2018 at about 7:30 p.m, her parents came to see her, however, her in-laws did not permit them to enter the house and picked up a quarrel and the applicant assaulted her by fist and kick blows. A perusal of the statement of the applicant's daughter shows that the applicant had mixed certain pills in a juice for being administered to the complainant.

4 The applicant has filed an affidavit stating that he will not contact his daughter nor will he file any proceedings for access and custody of his daughter during the pendency of the aforesaid case. It appears that initially the offences were registered under Section 498A etc. and after 11 days, Section 328 was added. The applicant is in custody since 30th March 2019. Investigation is complete and charge-sheet is filed.

5 Considering the aforesaid as well as the affidavit of the applicant, the application is allowed on the following terms and conditions :

ORDER

- (i) The applicant be released on cash bail in the sum of Rs. 15,000/-, for a period of six weeks;
- (ii) The applicant shall within the said period of six weeks, furnish P.R. Bond in the sum of Rs. 15,000/- with one or two local sureties in the like amount;
- (iii) The applicant shall not tamper with the evidence or attempt to influence or contact the complainant, their daughter, witnesses or any person concerned with the case;

(iv) The applicant shall inform his latest place of residence and mobile contact number and/or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station;

(v) The applicant to cooperate with the conduct of the trial and attend all the dates before the trial Court, unless exempted;

(vi) The applicant shall file an undertaking with regard to clauses (iii) to (v) in the trial Court, within two weeks of his release;

(vii) If there are two consecutive defaults in appearing before the trial Court, or breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the applicant's bail.

6 The application is accordingly disposed of.

7 It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

8 Before parting with the aforesaid order, it is pertinent to note that the submission made by the learned A.P.P in the trial Court that an application after filing of charge-sheet does not amount to change of circumstances, is completely untenable and contrary to the legal position. Similarly, the judgment relied upon by the learned Judge in para 8 of the order quotes a headnote, which is contrary to the actual order passed by the Apex Court in the case of ***Virupakshappa Gouda and Anr. v. State of Karnataka & Anr.***¹. Nowhere in the said judgment, the Apex Court has said that filing of charge-sheet is not the change of circumstance.

9 Registry to communicate the above order to the Additional Sessions Judge-8, Thane, who has passed the order dated 13th August 2019, rejecting the applicant's regular bail.

10 Learned A.P.P to ensure that the above order is communicated to the A.P.P, who appeared in the said application, before the trial Court.

11 All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.

1 2017 Cri. L.J. 2769