

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.2326 OF 2018

Ashpak Sikandar Pathan & Ors.	]	... Applicants
Versus		
1. The State of Maharashtra	]	
2. Jakira Ashpak Pathan	]	... Respondents

Mr. Kuldeep Patil i/b Mr. Prashant Hagare, Advocate for the Applicants.

Ms. S.S. Kaushik, APP for the State/Respondent.

CORAM :- SARANG V. KOTWAL, J.

DATE :- 19 JUNE, 2019.

P. C. :-

1. The applicants are seeking anticipatory bail in connection with C.R. No.646/2018 registered with Daund Police Station, Pune Rural u/sec. 307, 377, 498 (A), 504, 506 r/w 34 of I.P.C.

2. The FIR is lodged by wife of the Applicant No.1. The Applicant No.2 is the father and Applicant No.3 is the brother of the Applicant No.1.

3. The first informant has mentioned in her FIR dtd. 15/10/2018 that she had got married with Applicant No.1 on 24/01/2016. After initial period of one month, the first informant's husband and his family members started harassing her on the ground of non fulfillment

of their demand. After the first informant delivered a girl child, the harassment increased. In the FIR, the informant has mentioned that she had started residing at her parental place and was there till April 2018. However, in the month of May 2018 there was some compromise arrived at between the couple and therefore she started residing with Applicant No.1 in his house with other family members. She has stated in the FIR that on 10/07/2018 all these applicants tried to drown her girl child in a water tank. The first informant rescued her and thereafter she went to her parents' house again. She has further mentioned that, on 10/09/2018 when she had come with her mother to meet the applicants, at that time her mother was assaulted and the informant was not allowed to reside with her husband's family. There are allegations that the Applicant No.1 committed unnatural physical intercourse with her. On these allegations, the FIR was lodged.

4. Heard Mr. Kuldeep Patil, Ld. Counsel for the Applicants and Ms.S.S. Kaushik, APP for the State/Respondent.

5. Pursuant to the previous orders passed by this court, the original

first informant was made a party. The office notings show that the notices were duly served on the first informant. However, nobody appears for the first informant.

6. Ld. Counsel for the applicants submitted that the FIR is lodged as an after thought as the first informant had no evidence against the applicants. He invited my attention to the notice dtd. 22/03/2018 issued on behalf of the Applicant No.1 to the first informant. The notice was in respect of their matrimonial dispute and she was called upon to reside together with the Applicant No.1. According to Ld. Counsel for the applicants, the notice remained unanswered. He also pointed out that one more FIR vide C.R. No.552/2018 was lodged at Daund Police Station u/sec. 354, 323, 504, 506, 143, 147 of I.P.C. at the instance of mother of the first informant herein. In the said FIR, the applicants were arrested. However, in that FIR, there were no allegations against them of trying to commit murder of the informant's daughter and there are no allegations of any other offences which are mentioned in the present FIR. He therefore, submitted that the present FIR is nothing but concocted story which is a result of grudge which the informant was holding against the applicants.

7. Considering the submission of the Ld. Counsel for the applicants and those of the Ld. APP who opposed grant of anticipatory bail, in my view, the applicants have sufficiently made out a case for anticipatory bail. It can be seen that, on previous occasion, the mother of the first informant had lodged a separate FIR in the month of September 2018 and at that time, there is absolutely no reference to the incident which had taken place in July 2018 wherein the applicants are alleged to have tried to drown the child of the first informant in the water tank. Moreover, there are no allegations of Applicant No.1 committing any unnatural act as alleged in the present FIR. It cannot be overlooked that in the month of March 2018, Applicant No.1 had issued notice thorough his Advocate to the first informant pointing out the reason for matrimonial dispute and had called upon the first informant to reside with him. Thus, it is quite obvious that the present FIR is lodged as a counter blast to the proposed action which was to be taken by the first applicant in respect of their marriage. In respect of the serious incident of causing harm to the first informant's daughter, there is no immediate reaction on her part and no complaint is immediately lodged. This FIR is lodged in the month of October 2018. In between the first informant's mother

had lodged another FIR where said fact was not disclosed. Taking all these facts into account, in my considered view the applicants have made out a case for grant of anticipatory bail. Hence, the following order.

ORDER

1. In the event of their arrest in connection with C.R. No.646/2018 registered with Daund Police Station, Pune Rural the Applicants are directed to be released on bail on their executing P.R. Bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) each with one or two sureties each in the like amount.
2. Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)