

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****ANTICIPATORY BAIL APPLICATION NO. 2594 OF 2018**

AMIT PREMJI RITA S/O. PREMJI
AND ANR.

.....APPLICANTS

Vs.

THE STATE OF MAHARASHTRA
AND ANR.

.....RESPONDENTS

Ms. Purvi Shah a/w Mr. Ashok Yadav for the Applicants.

Ms. Rutuja Ambekar APP, for the Respondent-State.

Mr. Sanjeev Kadam a/w Ms. Vilasini Balasubramanian for the
Respondent No.2-Intervenor.

CORAM : A. S. GADKARI, J.

DATE : 9th APRIL, 2019.

P.C.:-

Heard the learned counsel for the Applicants, the learned
counsel for the first Informant and the learned APP. Perused the
record of investigation.

2 By an Order dated 21st December, 2018, the Applicants
were granted interim relief and were directed to attend the
Investigating Officer on stipulated dates, to join the process of
investigation.

3 The first informant is the wife of the Applicant No.1 and

daughter-in-law of Applicant No.2.

The prosecution case in brief is that, the marriage between the Applicant No.1 and the first informant was solemnized on 18th February 2006 at Mumbai as per Hindu religion. That, the Applicants and in particular Applicant No.2 subsequently, asked the informant to hand over her "*Stridhan*" and/or ornaments in her custody. It is alleged that, the Applicant No.1 has committed an act as contemplated under Section 377 of the Indian Penal Code against the informant. That, the Applicant No.1 was having extra marital affair with some other lady and therefore, the Applicant No.1 directed the informant to give him divorce. It is alleged that, the Applicants have retained the "*Stridhan*" of the prosecutrix which is squandered off as mentioned in the first information report. It is stated that, on 24th May, 2018, the Applicant No.2 directed the relatives of the first informant to take the informant and her daughter to her parent's house and therefore, the informant had left her matrimonial house.

4 The learned counsel for the Applicants submitted that, in pursuance of Order dated 21st December, 2018, the Applicants have attended the Investigating Officer on stipulated dates and have joined the process of investigation. She further submitted that, the Supreme

Court recently has held that, for recovery of “*Stridhan*” and/or ornaments in an offence under Section 498-A, the bail Application of the accused persons need not be rejected. She placed reliance on two decisions of the Hon’ble Supreme Court namely (i) *Social Action Forum for Manav Adhikar & Anr. Vs. Union of India, Ministry of Law and Justice & Ors.* reported in (2018) 10 SCC 443 and (ii) *Rajesh Sharma & Ors. Vs. State of Uttar Pradesh & Anr.* reported in (2018) 10 SCC 472.

She submitted that, the Applicants are not in possession of the said ornaments and there is nothing to recover at the behest of the Applicants by the police and therefore, their custodial interrogation is not necessary. She further submitted that, the informant was also operating the said bank locker and therefore, some of the ornaments are already taken away by the informant. She therefore prayed that, the Applicants may be protected by pre-arrest bail by allowing the present Application.

5 At the outset, it is to be noted here that, the Supreme Court in the case of *State Rep. by The C.B.I Vs. Anil Sharma reported in (1997) 7 SCC 187*, has held that, the custodial interrogation is qualitatively more elicitation- oriented than

questioning a suspect who is well ensconded with a favorable order under Section 438 of the code. In a case like this effective interrogation of suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual.

In view of thereof, the contention of the learned counsel for the Applicants that, the Applicants in pursuance of Order of this Court have attended the Investigating Officer on stipulated dates is of no avail to her.

At this stage, it is to be noted here that, the learned APP on instructions from the Investigating Officer submitted that, the Applicants though attended the Investigating Officer of the concerned police station on stipulated dates did not co-operate in the process of investigation.

6 The record further indicates that, after lodgment of the

present crime, on 23rd September, 2018, the Applicants and in particular Applicant No.2 has operated bank locker with a New India Co-operative Bank Limited, Malad (East), Branch.

The first information report and other documents of investigation, *prima facie* indicate that, the main offence alleged against the Applicant No.1 is of under Section 377 of the Indian Penal Code and as far as the Applicant No.2 is concerned Section 406 of the Indian Penal Code, i.e. criminal breach of trust.

The record of investigation further indicates that, the Investigating Officer had been to the house of the Applicants for conducting a search on 8th April 2019, at about 12.00 in the noon when the Applicants herein, did not allow the Investigating Officer to conduct a search and created ruckus at the said place, though the Applicants were aware of the fact that, they are accused in an offence which is cognizable and non-bailable in nature and they did not co-operate in the process of investigation. The Investigating Officer has maintained record in that behalf.

7 In view of the above and after taking into consideration the gravity of the offence and serious allegations against the Applicants, this Court is of the considered opinion that the Applicants

do not deserve to be protected by pre-arrest bail.

Application is accordingly rejected.

8 At this stage, the learned counsel for the Applicants submitted that, the Applicants intend to challenge the present Order before the Hon'ble Supreme Court and therefore the effect and operation of the said Order be stayed for four weeks.

After taking into consideration the conduct of the Applicants and the need of expeditious investigation of the present crime, the said request is rejected.

(A.S. GADKARI, J.)