

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (ABA) NO. 710 OF 2019

Akbar Khan Haji Ishaque Khan .Vs. State of Maharashtra,through P.S.O, P.S.
Buldhana (City), Dist. Buldhana.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. P. W. Mirza, Advocate for applicant.
Mr. V.A. Thakare, A.P.P for non applicant- State.
Mr. S.S. Ullah, Advocate for original complainant.

CORAM : V. M. DESHPANDE, J.
DATED : NOVEMBER 18, 2019

Heard Mr. PW. Mirza, learned counsel for the applicant, Mr. V. A. Thakare, learned Additional Public Prosecutor for the non applicant-State and Mr. Ullah, learned counsel for the original complainant. Also perused the investigation papers.

The applicant is apprehending his arrest in connection with Crime No. 519/2019 registered with Police Station, Buldhana (City), Dist. Buldhana for an offence punishable under Sections 498A, 376B, 323, 504, 506 read with Section 34 of the Indian Penal Code.

The report is lodged on 19.09.2019 by Arshiya Parvin Akbar Khan wife of applicant Akbar Khan. As per report, her marriage was performed with the applicant on 21.11.2016 and after her marriage, she started residing with the applicant and her mother-in-law at Mirza Nagar, Buldhana. According to report, though initially for some

days she was treated nicely, subsequently ill treatment was started to her at the hands of the applicant and his mother on account of demand of money. It is stated in the report that after three months of her marriage she was driven out from her matrimonial house and since then she is residing with her parents. She has already filed a petition against the applicant and his mother. It is stated in the report that after lodging the proceedings, the applicant started talking nicely with her. The report shows that in the month of January-2019 she received phone call from the applicant wherein he disclosed that his mother-Nazima has gone to Mumbai and therefore, he called her for meeting and on 21.01.2019, the applicant and first informant Arshiya met. As per the report, on the said date, against her wish in the matrimonial house the applicant committed sexual intercourse with her.

After hearing the learned counsel for the parties following facts emerges on record. After the marriage though for a period of three months the complainant was residing with the applicant, thereafter she started residing along with her parents. Whether she on her own left or she was driven out from her matrimonial house is a question, which can be decided only after adducing evidence in that behalf.

Be that as it may, on 06.04.2018, the first informant lodged a complaint in the Court of learned Chief Judicial Magistrate, Buldana under the relevant provisions of the Protection of Women from Domestic Violence Act, 2005. The said was registered as Criminal (D.V. Act) Case

No.26/2018. The said compliant was lodged not only against the applicant and her mother but also other relatives as it could be seen from the complaint which is annexed along with the application for anticipatory bail. After the notice, the non applicant in D.V. proceedings appeared and the proceedings were going on. The learned counsel for the applicant has filed certified copy of the Roznama of the said proceedings along with applicant's affidavit dated 11.11.2019. The copy of roznama would show that on 18.06.2019 the learned Magistrate referred the dispute to the trained Mediator. The certified copy of the Roznama further shows that on 13.09.2019 learned Magistrate's Court received negative mediation report which is at Exhibit-11 in the said Domestic Violence proceedings. The record will show that after failure mediation report was presented on 13.9.2019, on 19.09.2019 the report is lodged against the applicant and his mother. The aforesaid facts speak volumes at least at this stage in favour of the applicant. The applicant's mother has already granted bail by this Court.

Looking to the inordinate delay of more than eight months and though the opportunity was there to the informant to disclose the fact in the Court of learned Magistrate, the said is not disclosed, in my view, the applicant's personal liberty can be protected. Consequently, I pass following order:

ORDER

- (i) The application is allowed.

(ii) In the event of arrest in connection with Crime No. 519/2019 registered with Police Station, Buldhana (City), Dist. Buldhana for an offence punishable under Sections 498A, 376B, 323, 504, 506 read with Section 34 of the Indian Penal Code, applicant – Akbar Khan Haji Ishaque Khan, be released on bail on he executing PR. Bond in the sum of Rs.15,000/- with one solvent surety in the like amount.

(ii) The applicant is directed to attend Police Station, Buldhana (City), Buldhana twice a week i.e. on every Sunday and Monday and shall be with the investigating officer from 11:00 a.m. to 02:00 p.m. till filing of the charge-sheet.

(iii) The application is disposed of.

JUDGE

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