

Nalawade A.S.

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

ANTICIPATORY BAIL APPLICATION NO. 182 OF 2020

Abdul Saleem Abdul Kareem Shaikh and ors. ..Applicants.

vs.

State of Maharashtra and anr. ..Respondents.

Mr. Ram Satalwar i/by Shabnam Shaikh for the Applicants.

Ms. Pallavi Dabholkar, APP for the State.

CORAM : N. J. JAMADAR J.

DATE : 20th March, 2020

PC:

1. This is an application for pre-arrest bail under Section 438 of the Cr.P.C. The applicants are arraigned for offences punishable under Section 498A and 406 of the Indian Penal Code for having subjected Mrs. Rafatnaj, first informant, wife of applicant No. 1 to cruelty in order to coerce her to meet unlawful demand of a sum of Rs.3.00 lacs for the purpose of giving the said amount as deposit to take a room on rent. The applicant Nos. 2 to 6 are the relatives of applicant No.1.

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2. The gravamen of indictment against the applicants is that after about one year of marriage, the applicant No.1 started to harass the first informant at the instance of co-accused. The applicants made a demand of sum of Rs.3.00 lacs for paying the same as deposit. The financial position of the first informant's father was not sound. As the first informant could not meet the demand, the first informant was subjected to harassment. Lastly on 4.12.2018, the applicant No.1 assaulted the first informant for not meeting the demand of money. The hairs of the first informant were cut. Her face was blackened. She was left at Bhiwandi against her will. It is further alleged that the applicant No.1 had removed ornaments from the person of the first informant. Hence, the first informant lodged the report with Ganeshpuri Police Station, Bhiwandi vide CR No.147/2019 on 12.10.2019.

3. The applicants assert that they are falsely implicated. The first informant has left the matrimonial home on

her own . The first informant had filed an application in the Court of Learned Magistrate at Bhiwandi under the provisions of Protection of Women from Domestic Violence Act,2005 being Application No.122/2017. The first informant, however, withdrew, the said proceeding and started to reside with the applicant No.1 separately. In fact, the first informant's conduct was the cause of matrimonial discord. The applicant Nos. 2 to 6 have never subjected the first informant to cruelty and harassment. The applicant Nos. 2,4 and 6 are pardanashin ladies. Thus, the applicants be directed to be released on bail in the event of their arrest.

4. The applicants had initially filed an application for pre-arrest bail before the learned Sessions Judge,Thane. Initially ad-interim protection was granted to the applicant Nos. 2 to 6. However, since the applicant Nos. 2 to 6 did not abide by the conditions of the order, by which the interim protection was granted, the learned Sessions Judge rejected the application by an order dated 9.1.202

5. Learned counsel for the applicants urged that from the very allegations in the FIR, it becomes clear that there was no cruelty or harassment at the hands of the applicants and the first informant has made wild allegations so as to rope in the applicants.

6. Learned APP submitted that the fact that the applicant Nos. 2 to 6, who were granted interim protection, did not co-operate with the Investigation agency, by itself is sufficient to disentitle them the discretionary relief of pre-arrest bail. Learned counsel for the applicants submitted that the applicant Nos. 2 to 6 did not attend the police station for want of communication from the learned counsel who appeared before the Sessions Court.

7. From the perusal of the material on record it becomes evident that the marriage of the applicant No.1 with the first informant was besetted with marital discord. There were efforts to resolve dispute and resume cohabitation. The

first informant had, in fact, lodged the proceedings under the provisions of Protection of Women from Domestic Violence Act, 2005 and subsequently withdrew the same on the assurance that she will be treated well. The first informant alleged that despite the said assurance the applicant No.1 subjected her to cruelty and harassment. The last of the acts of cruelty is of 4.12.2018. The applicant No.1 husband is alleged to have abused, assaulted and humiliated the first informant on 4.12.2018 and also relieved her of all the ornaments. In the backdrop of aforesaid allegations a prima facie case can be said to have been made out against the applicant No.1.

8. The case of applicant Nos. 2 to 6, however, stands on different footing. The allegations against the applicant Nos. 2 to 6 are of general and omnibus in nature. In the circumstances, the custodial interrogation of the applicant Nos. 2 to 6 is not warranted.

9. The fact that the applicant Nos. 2 to 6 did not attend

the police station and co-operate with the investigation agency, when interim protection was granted during the pendency of the application before the learned Sessions Judge, Thane, is required to be considered in the backdrop of the material on record. The material on record does not squarely incriminate the applicant Nos. 2 to 6 and thus their custodial interrogation is not warranted. I am therefore inclined to exercise the discretion in favour of applicant Nos. 2 to 6. Hence, the following order.

ORDER

a) The application for pre-arrest bail of applicant No.1 Abdul Saleem Abdul Kareem Shaikh stands rejected.

b) The application of applicant Nos. 2 to 6 stands allowed.

c) In the event of arrest of applicant Nos. 2 to 6 in CR No.147/2019 registered with Ganeshpuri Police Station, Thane of the offences punishable under Sections 498A and 406 of the

I.P.C., the applicant Nos. 2 to 6 be released on bail on their furnishing PR bond of Rs.10,000/- each and a surety in the like amount.

d) The applicant Nos. 2 to 6 shall co-operate with the investigation agency and attend the Ganeshpuri Police Station on every alternate Sunday from 10.00 a.m. to 12.00 noon, with effect from 5th April, 2020 for a period of two months.

e) The applicant Nos. 2 to 6 shall not tamper with the prosecution evidence and give any threat or inducement to the first informant.

Application stands accordingly disposed of.

[N. J. JAMADAR J.]