

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRCA No. 304 of 2021**

- Smt. Yashmeen Khan W/o Shri Habibullah Khan, aged about 55 years, R/o D-50, Babji Park, Ring Road No.02, Bilaspur, District Bilaspur (C.G.)
- Sajiya Khan, D/o Shri Habibullah Khan, aged about 26 years, R/o D-50, Babji Park, Ring Road No.2, Bilaspur, District Bilaspur (C.G.)

---- Petitioners**Versus**

- State Of Chhattisgarh Through : Officer In-charge, Police Station – Mahila Thana, District Raipur (C.G.)

---- Respondent**And****MCRCA No. 314 of 2021**

- Habibullah Khan S/o late Shri Abdul Hai Khan, aged about 64 years, R/o D-50, Babji Park, Ring Road No.02, Bilaspur, District Bilaspur (C.G.)

---- Petitioner**Versus**

- State Of Chhattisgarh Through : Officer In-charge, Police Station – Mahila Thana, District Raipur (C.G.)

---- Respondent**And****MCRCA No. 561 of 2021**

- Shaifullah Khan S/o Habibullah Khan, aged about 31 years, R/o D-50, Babji Park, Ring Road No.02, Bilaspur, District Bilaspur (C.G.)

---- Petitioner**Versus**

- State Of Chhattisgarh Through : Officer In-charge, Police Station – Mahila Thana, District Raipur (C.G.)

---- Respondent

For Applicants	:	Mr. D.K. Gwalre, Advocate in MCRCA No.304/2021, Mr. Prafull N. Bharat, Sr. Advocate with Mr. Ishan Verma, Advocate in MCRCA No.314/2021 and Mr. Rajeev Shrivastava, Sr. Advocate with Mr. Ishan Verma, Advocate in MCRCA No.561/2021.
For Respondent.	:	Mr. Amrito Das, Additional Advocate

For Objector : General for the State.
Mr. Kashif Shakeel and Mr. Santosh
Kumar Pandey, Advocates

Hon'ble Smt. Justice Rajani Dubey

Order on Board

15/06/2021

1. The matter is heard through video conferencing.
2. Since, the aforesaid anticipatory bail applications arise out of the same crime number, they are being heard and decided by this common order.
3. These applications under Section 438 of the Code of Criminal Procedure have been filed by the applicants who are apprehending their arrest in connection with Crime Number 16/2021 registered at Police Station Mahila Thana, District Raipur for the offence punishable under Sections 498-A, 34, 506, 354, 377, 406 of Indian Penal Code.
4. The prosecution story, in brief, is that on 02.02.2021, the complainant, who is wife of applicant Shaifullah Khan in MCRCA No.561/2021, lodged an FIR against the present applicants *inter-alia* alleging that the husband of the complainant and his family members demanded car and money from the complainant, used filthy language and also threatened to kill her. It has been also alleged that her husband had done unnatural sexual intercourse with her and her father-in-law (applicant in MCRCA No.314/2021) used criminal force on her with intention to disrespect her, tortured physically and mentally by misusing the stridhan, whereas the applicants (mother-in-law and sister-in-law) in MCRCA

No.304/2021 used to encourage the husband. Based on this, offence has been registered against the present applicants.

5. Mr. Rajeev Shrivastava, learned Sr. Advocate appearing in MCRC No.561/2021 submits that the applicant is innocent and has been falsely implicated in the crime in question. He further submits that the marriage of complainant solemnized with the applicant in the year 07.10.2018, and due to some matrimonial dispute she has been residing with her parents from 09.02.2019. The complainant made a complaint in police station on 18.11.2020 and the FIR was registered on 02.02.2021 with delay of about three months and no plausible explanation has been offered in this regard. The ingredients of complaint and FIR clearly demonstrates that it is the complainant who does not want to reside with the husband and his family members. There is only allegation against the applicant and his family members & no disclosure thereof. He also submits that a social meeting was also convened to resolve the dispute, which was attended the applicant and his family members (co-accused). Videography of the meeting was also done, which was handed over to the police. In this meeting, none of the allegation was made by the complainant. He also submits that three round of counseling was done in the police station and the applicant and co-accused appeared in the same. There is every possibility of reunion in the matter and the FIR has been lodged just to substantiate the allegation so levelled against the applicant and his family members. The matter is so simple but it has been made complicated by the complainant.

Learned Sr. Advocate also submits that the applicant and co-accused persons are not criminal. This is pure a family dispute and there is no justification for custodial interrogation in the matter. Therefore, the applicant may be granted anticipatory bail.

6. Mr. Prafull N. Bharat, learned Sr. Advocate in MCRCA No.314/2021 and Mr. D.K. Gwalre, learned counsel in MCRCA No.304/2021 have adopted the argument advanced by Mr. Shrivastava, learned Sr. Advocate in MCRCA No.561/2021.
7. Apart from the argument so advanced, Mr. Prafull N. Bharat, learned Sr. Advocate submits that there is exaggerated and vague allegation against the applicant in MCRCA No.314/2021. The documents filed by the Objector (Annexure C/4 and C/5) do not pertain to this case.
8. As regards allegation of dowry raised by the complainant, Mr. Gwalre, learned counsel in MCRCA No.304/2021 made additional submission that the complainant herself has admitted that her marriage was solemnized with the applicant in MCRCA No.561/2021 according to Muslim custom and there is no dowry system in her society. He also submits that there is no specific allegation against the applicants. The only allegation against the applicants is that they used to encourage her (complainant's) husband. Learned counsel placed reliance on the decisions of Hon'ble Supreme Court in the matter of **Arnesh Kumar Vs. State of Bihar and another** reported in **(2014) 8 SCC 273**, **Siddharam Satlingappa Mhetre Vs. State of Maharashtra and others** reported in **(2011) 1 SCC 694** and the decision of

this Court in the matter of **Dr. Sunil Puri Vs. State of C.G.** reported in **2006 (2) C.G.L.J. 1.**

9. Mr. Amrito Das, learned Additional Advocate General for the State opposing the anticipatory bail applications submits that after FIR, 164 Cr.P.C. statement of the applicant has been recorded, according to which, she was subjected to cruelty for demand of dowry. Her father-in-law has also touched her body with intent to outrage her modesty. He also submits that counseling was done in the matter but all the efforts went into vain.
10. Mr. Shakil and Mr. Pandey, learned counsel for objector strenuously objected the bail applications and submit that the cruelty suffered by the complainant in five months' married life has been narrated in the FIR. Whatever happened to her, she has disclosed the whole truth before police which was reduced in writing. Thus, it cannot be said that the complaint was unadvocated which run to nine pages. He also submits that three round of counseling was done in the matter, in two counseling the applicants remained absent and in one counseling they said that they will not take the complainant with them. The complainant has lodged the FIR putting her life at risk. Therefore, the anticipatory bail may not be granted to the applicants.
11. I have heard learned counsel for the parties and perused the material on record.
12. Marriage of the complainant - Mahrukh Khan @ Saba was solemnized with Shaifullah Khan in MCRCA No.561/2021 in 07.10.2018. As alleged by the prosecution, the complainant

was harassed and oppressed by the applicants for demand of car and money.

13. Hon'ble the Supreme Court in the matter of **Arnesh (supra)** held in para 4, which reads thus:-

“4. There is phenomenal increase in matrimonial disputes in recent years. The institution of marriage is greatly revered in this Country. Section 498-A IPC was introduced with avowed object to combat the menace of harassment to a woman at the hands of her husband and his relatives. The fact that Section 498-A IPC is a cognizable and non-bailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives. The simplest way to harass is to get the husband and his relatives arrested under this provision. In a quite number of cases, bedridden grandfathers and grandmothers of the husbands, their sisters living abroad for decades are arrested. “Crime in India 2012 Statistics” published by the National Crime Records Bureau, Ministry of Home Affairs shows arrest of 1,97,762 persons all over India during the year 2012 for the offence under Section 498-A IPC, 9.4% more than the year 2011. Nearly a quarter of those arrested under this provision in 2012 were women i.e. 47,951 which depicts that mothers and sisters of the husbands were liberally included in their arrest net.”

14. In view of judgment of Hon'ble Supreme Court in **Arnesh (supra)**, and considering the submissions made on behalf of the applicants, quality of evidence and further considering the fact that the complainant herself had left the matrimonial house on 09.02.2019, this Court deems it fit to release the applicants on anticipatory bail. Therefore, allowing the

applications, it is ordered that in the event of arrest by the Arresting Officer or by the Court concerned, the applicants shall be released on bail on their furnishing a personal bond for a sum of Rs.50,000/- - Rs.50,000/- each with one surety in the like amount to the satisfaction of arresting officer.

15. The applicants are directed to join the investigation immediately and fully co-operate with the investigation. They shall further abide by the other conditions enumerated in sub-section (2) of Section 438 of Cr.P.C.

Sd/-

(Rajani Dubey)
Judge

PKD