

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

11 ANTICIPATORY BAIL APPLICATION NO.270 OF 2021

PATHAN AZHAR KHAN S/O AFZAL KHAN  
VERSUS  
THE STATE OF MAHARASHTRA AND ANOTHER

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Mr. M.A. Golegaonkar, Advocate for the applicant.  
Mr. S.B. Narwade, A.P.P. for respondent - State.

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CORAM : **PRAKASH D. NAIK, J.**

DATE : 25-10-2021

**ORDER :**

1. The applicant has preferred this application under Section 438 of the Code of Criminal Procedure (for short "Cr.P.C.") since he is apprehending arrest in Crime No. 35/2021 registered with M.I.D.C. CIDCO Police Station, Aurangabad on 06.02.2021 for the offences punishable under Sections 323, 325, 504, 506 read with Section 34 of the Indian Penal Code (for short "I.P.C.") and Section 4 of the Muslim Women (Protection of Rights on Marriage) Act, 2019.

2. The case of the complainant which is apparent from the First Information Report (for short, "F.I.R.") dated 6<sup>th</sup> February 2021 is that she was divorcee from her previous marriage. The husband is also divorcee from first marriage. The marriage with accused was solemnized on 12.12.2019. Pursuant to marriage, the complainant was ill-treated. There was physical and mental torture. There was demand of money. Complainant started residing with her parents. On 14.01.2021 F.I.R. was registered by her vide Crime No. 18/2021

under Sections 498-A, 323, 504, 506 read with Section 34 of the I.P.C. On 11.01.2021 she visited the office of the applicant in the rickshaw of Mohammad Ali Pathan Yusuf Pathan. The rickshaw driver was waiting. She knocked the door of office. The applicant came out of office. She told him that she wants to cohabit with him. She would not stay at her parents house. The complainant was abused and assaulted. He pronounced Talak thrice. Due to assault, there was bleeding from her ear. The applicant called his father. After reaching the place of incident, father in law abused and threatened her. The complainant lodged complaint on 12.01.2021 for offences under Sections 323, 504, 506 of I.P.C.

3. The applicant preferred application for anticipatory bail to the Court of Sessions which has been rejected by order dated 23.02.2021.

4. The learned Counsel for the applicant submitted that there are differences between applicant and the complainant. The allegations about triple Talak are concocted. The offences under Sections 323, 324, 504 and 506 of the I.P.C. are bailable. The complainant had lodged F.I.R. for the offences punishable under Section 498-A of I.P.C. and other offences. In the said F.I.R. there was no allegation of pronouncement of triple Talaq. The investigation of Crime No. 18/2021 was transferred to M.I.D.C. Cidco Police Station. Interim protection was granted to the applicant by Sessions Court on 10.02.2021, during pendency of the application before the said Court. The custodial interrogation of the applicant is

not necessary.

5. Learned A.P.P. submitted that specific overt act has been attributed to the applicant. The victim was assaulted and she has sustained severe injuries. The injury certificates support the version of complainant. Statement of rickshaw driver Mohammad Ali Pathan Yusuf Pathan has been recorded which corroborates the version of complainant. The applicant has committed offence under Section 4 of the Muslim Women (Protection of Rights on Marriage) Act, 2019.

6. The complainant has filed affidavit-in-reply. Learned Counsel for the complainant submits that the offence is of serious nature. Overt act has been attributed to the applicant. Copies of injury certificates are annexed to reply. Huge amount was spent in marriage. The applicant has demanded money for purchasing office. She has undergone surgery. She was thrown out of matrimonial home. The complainant had visited M.I.D.C. CIDCO Police Station and filed written complaint. The police registered non-cognizable complaint on 12.01.2021. In the said complaint she has stated that the applicant has pronounced triple Talaq. The complainant filed complaint with Jinsi Police Station on 13.01.2021. Applicant is harassing and threatening complainant. It is submitted that non-cognizable complaint was lodged against the applicant on 12.01.2021 under Sections 323, 504, 506 of the I.P.C. In the application dated 13.01.2021 addressed to the Police Inspector, Jinsi Police Station it has been stated that the applicant had

pronounced triple Talak. Continuous harassment was meted out to the complainant.

7. From the tenor of First Information Report, it can be seen that the marriage between the applicant and complainant was performed on 12.12.2019. Crime No. 18/2021 was registered on 14.01.2021 under Sections 498-A, 323, 504 and 506 read with Section 34 of the I.P.C. The complainant has alleged that after the marriage there was ill-treatment to her and there was demand of money. Husband and in-laws of the complainant refused to take her in the matrimonial home and since then she is residing with her parents. It appears that for short span of time after the marriage, the victim was residing with her husband. Separate F.I.R. was lodged on 14.01.2021 for the offences punishable under Sections 498-A, 504, 506 of the I.P.C. Learned Counsel for the applicant submitted that the investigation had proceeded in the said case and it was intimated to him that charge-sheet would be filed shortly. There is no reference of the allegations of triple Talak in the F.I.R. registered vide Crime No. 18/2021. The counsel for the complainant has, however, contended that in the written complaint forwarded prior to registration of the present F.I.R., the allegations relating to triple Talak are reflected. Although the alleged pronouncement had occurred prior to registration of the F.I.R. vide Crime No. 18/2021, it is not clarified as to how it is not reflected in the said F.I.R. Crime No. 18/2021 was registered with City Chowk Police Station on 14.01.2021 at 14.56 p.m., under Sections 323, 498-A, 504, 506, 34

of the I.P.C., against applicant, Saira Bano and Afzal Pathan. It was alleged that applicant demanded Rs. 65,00,000/- for purchasing office. On 11.01.2021 she visited office of attribute. At that time she was assaulted by applicant. She approached CIDCO Police Station. She took treatment. Thus, the incident of 12.01.2021 is subject-matter of Crime No.18/2021. However, there is no reference of pronouncement of triple Talaq and presence of rickshaw driver as alleged in F.I.R. No. 35/2021. The incident of 12.01.2021 is subject matter of two F.I.Rs. In subsequent F.I.R. vide CR No.35/2021 complainant has introduced rickshaw driver as eye witness to the incident. In respect to same incident dated 11.01.2021 N.C. was registered under Sections 323, 504, 506 of the I.P.C. on 12.01.2021 with M.I.D.C. CIDCO Police Station and the same police station registered Crime No. 35/2021. Thus incident dated 11.01.2021 is subject matter of different complaints.

8. All the offences invoked in Crime No. 35/2021 under the provisions of the I.P.C. are bailable in nature. The statement of rickshaw driver was recorded on 5<sup>th</sup> March 2021. The applicant was granted interim protection by this Court vide order dated 16<sup>th</sup> July 2021. During pendency of the application before the Sessions Court also the applicant was granted interim protection. Considering this factual aspect and the nature of dispute, the custodial interrogation of the applicant is not necessary. Hence, the following order.

### **ORDER**

- (i) ABA No. 270 of 2021 is allowed.

- (ii) The interim order dated 16<sup>th</sup> July 2021 is confirmed.
- (iii) In the event of arrest of the applicant in Crime No. 35/2021 registered with M.I.D.C. Cidco Police Station, Aurangabad, he shall be released on bail on executing P.R. bond in the sum of Rs. 20,000/- with one or more sureties in the like amount.
- (iv) The applicant shall appear before the Investigating Officer as and when called for, till filing of the charge-sheet.

9. The application stands disposed of.

**(PRAKASH D. NAIK, J.)**

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