

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR CANCELLATION OF BAIL NO.143 OF 2021

Ayesha @ Ashiya w/o Zuber Sayyed

Applicant.

Versus

The State of Maharashtra and others

Respondents

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Mr. U.L. Momale, Advocate for the applicant.

Mr. A.S. Shinde, A.P.P. for respondent – State.

Mr. Balraj Pande, Advocate for respondent Nos. 2 to 5.

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

Reserved on : 7th October 2021

Pronounced on : 23rd November 2021

ORDER :

1. The applicant is the complainant in Crime No.38/2021 registered with Jawaharnagar Police Station, Aurangabad City on 16th February 2021 for the offence punishable under Section 498-A read with Section 34 of the Indian Penal Code and under Sections 3 and 4 of the Muslim Women (Protection of Rights on Marriage) Act, 2019 (for short, “the Act of 2019”).

2. This application has been preferred under Section 439 (2) of the Code of Criminal Procedure (for short, “Cr.P.C.”) for setting aside order dated 6th March 2021 granting anticipatory bail to respondent Nos. 2 to 5, passed by the Additional Sessions Judge, Aurangabad.

3. Respondent No.2 is the husband and respondent Nos.3 and 4 are father-in-law and mother-in-law of the complainant. Respondent No.5 is the married sister of respondent No. 2.

4. The case of the complainant is that, her marriage was performed with respondent No. 2 on 3rd May 2018. Few days after the marriage, she was ill-treated by the accused. From July 2018 she has been residing at her parental home. Respondent No.2 was residing with her at her parental home for a period of about one year. Child was delivered out of the wedlock on 28th October 2019. Respondent No. 2 pronounced triple Talaq on 17th September 2020. The complainant approached Women Redressal Forum and the police station. F.I.R. was registered on 16th February 2021.

5. Respondents / accused had preferred application for anticipatory bail before the Court of Session at Aurangabad. The said application was allowed vide order dated 6th March 2021.

6. Investigation proceeded and charge-sheet has been filed against the accused on 15th July 2021 and the proceedings are pending in the concerned Court vide R.C.C. No. 1798/2021.

7. The impugned order dated 6th March 2021 has been challenged by preferring this application on the grounds that anticipatory bail was granted to the accused without affording opportunity of hearing to the applicant / complainant. The accused

have not impleaded the complainant as respondent in the application for anticipatory bail. No notice of hearing of the application for anticipatory bail was given to the applicant. The F.I.R. was registered on the basis of the statement of complainant. The husband had uttered the word “Talaq” and committed offences under Sections 3 and 4 of the Act of 2019. As per Section 7 (c) of the Act of 2019, no person accused of an offence punishable under this Act shall be released on bail unless the Magistrate, on an application filed by the accused and after hearing the married Muslim woman upon whom *talaq* is pronounced, is satisfied that there are reasonable grounds for granting bail to such person. In view of the aforesaid provision, it was necessary that the applicant should have been heard by the Sessions Court while deciding the application for anticipatory bail.

8. The respondents filed affidavit-in-reply opposing the prayers sought in this application and have also relied upon the documents which are annexed to the affidavit-in-reply. The contention of the respondents No.2 to 5 is that the allegations in the F.I.R. are false. The alleged triple *talaq* was pronounced on 17th September 2020. The F.I.R. was lodged on 16th February 2021. There is delay in lodging the F.I.R. which shows that the allegation about violation of the provisions of the Act of 2019 is false. The complainant had left the matrimonial home in July 2018 i.e. immediately with a short span of time after the marriage. The F.I.R. was registered in 2021. Respondent No. 2 had forwarded a legal

notice to the applicant on 17th January 2020 for restitution of conjugal rights which was replied by the complainant on 20th January 2020. Father of respondent No. 2 i.e. respondent No. 3 has filed a complaint with the police on 14th August 2021 stating that the father of the applicant had given contract to two persons to kill the family of respondents No.2 to 5. The F.I.R. was registered with Daulatabad Police Station vide F.I.R. No. 130/2021 against Shahanoor Shaikh and Imtiyaz Shaikh under Sections 384, 386, 506 read with Section 34 of the Indian Penal Code stating that the accused therein have threatened the respondents for extorting Rs. 1,00,000/-. Investigation proceeded and charge-sheet has been filed on completing the investigation in the present case. Reliance is placed on status report of the case relating to Crime No. 38/2021. There is no provision for issuing notice or giving hearing to the complainant under the Act of 2019. Section 7 (c) of the said Act provides for giving hearing to the complainant in the event of arrest of accused and on his preferring application for bail before the Court of Magistrate. Since the charge-sheet is filed, the question of now subjecting the respondents / accused to custody, does not arise. Learned Sessions Judge, while allowing the application, has taken into consideration relevant factual aspects and hearing was given to the accused and prosecution. Merely on the ground that the complainant was not heard, the order granting anticipatory bail, may not be set aside. The provisions of the Act of 2019 are not applicable to respondent Nos. 3 to 5. They were not assigned any

role in commission of crime under the said Act. The complainant has undisputedly resided at matrimonial home for a short span of time. Hence application may be rejected.

9. Learned A.P.P. submitted that the prosecution had opposed the application for anticipatory bail. He submitted that the accused were involved in the offence under Section 498-A of I.P.C. and under Sections 3 and 4 of the Act of 2019. On instructions, it is submitted that charge-sheet has been filed against the accused.

10. As stated above, the marriage between applicant and respondent No. 2 was solemnized on 3rd May 2018. According to the complainant, she was ill-treated and expelled from the matrimonial home and since July 2018, she has been residing at her parental home. Thus, the complainant was residing at her matrimonial home for a period of about 3 months. Legal notice was sent by respondent No.2 for restitution of conjugal rights on 17th January 2020 which was replied by the complainant on 20th January 2020. Talaq was allegedly pronounced on 17th September 2020. F.I.R. was registered on 16th February 2021. The case status annexed by the respondents to their reply refers to the fact that the proceedings are pending before the concerned Court vide R.C.C. No.1798/2021.

11. Learned Sessions Judge had allowed application for anticipatory bail vide order dated 6th March 2021. The order

indicates that say was filed by the prosecution and the application was strongly resisted. Learned Sessions Judge has taken into consideration the submissions of the respondents / accused and the prosecution. It was observed that in view of nature of offence alleged and its investigation, pre-arrest protection can be granted to the applicants therein subject to certain terms and conditions. Respondent Nos. 2 to 5 were directed to co-operate with investigating agency and that they shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer. Breach of any of the condition mentioned therein shall make the applicants liable for cancellation of bail. From the tenor of the order, it can be seen that the complainant was not heard. However, the application was resisted by prosecution and objections at the instance of the prosecution were taken into consideration. The investigation then proceeded, charge-sheet has been filed on 15th July 2021 and the proceedings are pending for hearing before the concerned Court. Section 7 (c) of the Act of 2019 provides that no person accused of an offence punishable under this Act shall be released on bail unless the Magistrate, on an application filed by the accused and after hearing the married Muslim woman upon whom *talaq* is pronounced, is satisfied that there are reasonable grounds for granting bail to such person. The contention of the applicant is that, although the said provision relates to grant of bail on application preferred before

the Magistrate after hearing the married Muslim woman, the said mandate is applicable even for application under Section 438 of the Cr.P.C. Per contra, the submission of learned Counsel for the respondents / accused is that there is no reference of the said provision qua Section 438 of Cr.P.C.. It is not disputed that the application under Section 438 of Cr.P.C. is maintainable in connection with the offences under the aforesaid Act.

12. In the present case, it is pertinent to note that undisputedly the complainant was not heard and the prosecution was heard. The application was strongly resisted by the prosecution and considering the submissions of both sides, the application was allowed. Assuming that the complainant was required to be heard by drawing analogy from Section 7 (c) of the Act of 2019, while adjudicating the application under Section 438 of Cr.P.C. in factual aspects of this matter and more particularly considering that the investigation is completed and charge-sheet has been filed, on the ground that the complainant was not heard while allowing the application for anticipatory bail, the impugned order need not be set aside. Hence, I pass following order.

ORDER

ACB No. 143 of 2021 stands rejected and disposed of.

(PRAKASH D. NAIK, J.)