

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

931 APPLICATION FOR CANCELLATION OF BAIL NO.122 OF 2020

PALLAVI AMOL NAVALE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Mr. K.N.Shermale, Counsel for applicant

Mr. A.S.Shinde, APP for respondent No.1-State

Mr. Hemant U.Dhage and Mr. S.U. Kawade, Counsel for respondents No.2 to 14

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CORAM : PRAKASH D. NAIK, J.

DATE : 16th NOVEMBER, 2021

PER COURT:

1] This is an application under Section 439(2) of Code of Criminal Procedure (for short, 'Cr.P.C.'), challenging the order dated 30th September, 2020 passed by learned Additional Sessions Judge, Sangamner Dist.Ahmednagar, granting anticipatory bail to respondents No.2 to 14.

2] The applicant is the original complainant. The First Information Report (for short, 'FIR') was lodged by her on 25th July, 2020 for offences under Sections 498-A, 406, 323, 504 and 506 read with 34 of Indian Penal Code (for short, 'IPC'). It is alleged that the marriage of complainant was performed with respondent No.2 on 2nd July, 2017. For a period of about 2-3 months, she was treated well by the accused.

Thereafter, the accused demanded Rs.20 lakhs from the complainant for purchasing shop and constructing house. After about 8 to 9 months, the complainant informed her parents about it, when she visited her parental home. On account of poor financial condition of her parents, it was not possible to part with such amount. Accused was informed not to illtreat the complainant and that her parents are not in a position to satisfy the demand of accused. In the year 2018, her sister-in-law respondent No.10 took her to Mumbai. Respondents No.10, 11, 12, 13 and 14 insisted that she should bring money from her parents and suspected her character to prevent her from doing job. She was threatened and assaulted. She went to her parents house. She was admitted in hospital. Thereafter, her father again brought her to matrimonial house. The accused abused and assaulted the complainant and demanded Rs.20 lakhs. She was illtreated. They took 13 tolas ornaments of gold and silver given to her during marriage and forced her to leave matrimonial home on 27.09.2019.

3] The respondents/accused had preferred application for anticipatory bail before the Sessions Court at Sangamner Dist. Ahmednagar. By order dated 28.08.2020, interim relief was granted to them. Thereafter, the application was finally decided by confirming the interim order on 30th September, 2020.

4] Learned Counsel for the applicant submitted that the learned Additional Sessions Judge has not assigned any reasons for allowing the application for anticipatory bail. The gold ornaments were not recovered. Without recovering the ornaments, charge-sheet was filed. The applicant has relied upon the receipt of purchase of gold. The complainant was threatened by the accused. There was demand of Rs.20 lakhs from the complainant by the accused and for not fulfilling the demand, the complainant was illtreated causing physical and mental cruelty to her. The applicant had forwarded her complaint to Women Redressal Forum and Police Authority on 16.01.2020. Inquiry was committed by the Forum and report was submitted to the police and thereafter, the FIR was registered. The applicant had registered FIR bearing No.003/2020 against the father-in-law under Section 354-A, 354-C, 323, 504 and 506 of IPC. The impugned order is contrary to law. It was passed mechanically. The learned Judge did not take into consideration the nature of allegations. The application was allowed on the ground that notice under Section 41A of Cr.P.C. was not issued to the accused. There was specific allegations against the respondents/ accused. The learned Judge has misread the decision of Apex Court. The father-in-law has committed the second offence. There is breach of conditions by the accused, imposed while granting anticipatory bail.

Powers under Section 438 of Cr.P.C. are to be exercised in a genuine case. The applicant had filed complaint against Amol Vilas Nawle and Vilas Manohar Nawle on 14.10.2020 for offences under Sections 323, 504 and 506 read with 34 of IPC, which was treated as NC complaint. The said complaint related to threats issued by the accused to the complainant to withdraw the complaint. The said incident had occurred, when the complainant had visited the Court for attending the proceedings. The impugned order reflects total non-application of mind. The Court can cancel bail, if order granting bail results in miscarriage of justice. Reliances placed on the decisions of the Supreme Court in the case of Kanwar Singh Meena Vs. State of Rajasthan and Another delivered AIR (SCW)5654, the decision of the case in Vipan Kumar Dhir Vs. State of Punjab and Another delivered on 4th October, 2021 in Criminal Appeal Nos.1261-1262 of 2021, and another decision of the Supreme Court in case of Sonu Vs. Sonu Yadav and Another dated 5th April 2021 passed in Criminal Appeal No.377 of 2021.

5] Learned Counsel for the respondents No.2 to 14 submitted that the FIR is based on concocted version of the complainant. Several persons were implicated as an accused. There is no infirmity in the impugned order passed by the learned Sessions Judge. Custodial

interrogation was not necessary. The complaint relating to threats lodged by the complainant is false. The question of attending the Court proceedings as alleged by the complainant does not arise, as Circular was issued by the District & Sessions Court, Ahmednagar on 14th March, 2020, stating that the Court should not insist on the presence of the parties unless, it is unavoidable. There were restrictions on attendance of proceedings by the parties. He relied on the case status and submitted that on 14.10.2020 i.e. on the day, when the alleged incident of threats had occurred, the proceedings were not listed for hearing. Thus, the presence of the complainant in the Court premises is ruled out. The dispute is of matrimonial discord. Investigation is completed and the charge-sheet has been filed. Hence, the application may be rejected.

6] Learned APP submitted that the investigation has been completed and the charge-sheet is filed against the accused. There are specific allegations of cruelty and demand of money against the accused. The complainant was subjected to harassment by the accused. Specific role has been ascribed to the respondents/accused.

7] The FIR is lodged on 25th July, 2020 for the offences under Sections 498-A, 323, 406, 504 and 506 read with 34 of IPC. The complainant has impleaded 13 accused in the FIR. The accused No.1

(respondent No.2) is the husband of complainant. Accused No.2 Vilas Nawle (respondent No.3) is the father-in-law and accused No.3 Sangeeta Nawle (respondent No.4) is the mother-in-law of complainant. Respondents No.5 to 14 are relatives of respondents No.2, 3 and 4. The marriage was performed on 2nd July, 2017. The complainant has alleged harassment and demand of Rs.20 lakhs at the instance of accused. According to complainant, she was forced to leave matrimonial home on 27.09.2019. According to her, she had forwarded complaint to Women Redressal Forum, Ahmednagar dated 16th January, 2020. In the said complaint, it is stated that she was forced to leave matrimonial home in the month of July, 2019. She went to her parents house. She was brought to house of husband by her father and mediators. Her father gave Rs.50,000/- and cheque. Her father-in-law outraged her modesty. When she told about it to her husband, she was again forced to leave house. The date of the said incident is not mentioned. Her husband issued notice for restitution of conjugal rights through Advocate and thereafter, she joined the matrimonial home. She lodged complaint against her father-in-law. The allegation appearing in FIR that she was forced to leave matrimonial house on 27.09.2019 is not stated in this complaint.

8] Supplementary statement of complainant was recorded on 28.07.2020. Statements of witnesses were recorded. Prior to registration of this FIR, the complainant had lodged complaint against father-in-law on 02.01.2020 under Sections 354-A, 354-C, 323, 504 and 506 of IPC. The said incident had allegedly occurred on 02.01.2020. It is alleged that complainant had visited matrimonial house on receipt of notice from husband. All the incidents prior to 02.01.2020, reflected in present FIR (Crime No.366/2020) are absent in the said FIR.

9] The respondents/accused were granted interim protection by the learned Additional Sessions Judge during the pendency of the application for anticipatory bail vide order dated 28.08.2020 on certain conditions. The interim protection was confirmed by order dated 30th September, 2020. The learned Judge reproduced the arguments of both the sides in the impugned order. The prosecution has urged that *prima facie* there is evidence against the accused. They are involved in serious offence. They were harassing the informant. Provisions of Section 438 of Cr.P.C. are applicable to innocent persons but not the respondents/accused. Custodial interrogated is necessary for recovery of *Shridhan*. There is possibility of threatening the informant and witnesses and Shridhan is required to be recovered.

The learned Judge has observed that there is no need of custodial interrogation. The offences are under Sections 498-A, 406, 323, 504, 506 read with 34 of IPC. The learned Judge referred to the decision in the case of Arnesh Kumar Vs. State of Bihar. It was also observed that the applicants are permanent residents at the given addresses. There is no possibility of fleeing from justice and apart from that there is no need of custodial interrogation. Bail cannot be denied only on the ground that his release would render the recovery of jewellery and other articles difficult. Learned Counsel for the applicant had submitted that there is non-application of mind on the part of the learned Judge since para 10 of the order refers to Section 306 of IPC, although, the said provision was not invoked in this case. However, it is pertinent to note that in paragraph 8, the learned Judge has referred to Sections 498-A and 406 of IPC. The reference to Section 306 of IPC in para 10 is apparent to have been mentioned inadvertently. It is relevant to note that the investigation proceeded. Charge-sheet has been filed against the accused. The proceedings are pending in the Court.

10] Learned Counsel for the applicant has relied upon the decisions of the Apex Court referred to herein-above. In the case of Kanwar Singh Meena, it has been observed that the court can cancel bail, if in

case where the order granting bail suffers from serious infirmities resulting in miscarriage of justice. Section 439 of Cr.P.C. confers very wide powers on the Court. The Court has taken into consideration the gravity of the crime, the character of the evidence, position and status of the accused while granting bail. It is also observed that the Court must not undertake meticulous examination of evidence collected by the police and comment on the same. Such Assessment of evidence and premature comments are likely to deprive the accused of a fair trial. While cancelling bail under Section 439(2) of the Code, the primary considerations which weight with the Court are whether the accused is likely to tamper with the evidence or interfere or attempt to interfere with the due course of justice or evade the due course of justice. Similar view is expressed in the other decisions relied upon by learned counsel for the applicant.

11] Applying the principles for cancellation bails, to the facts of the present case, I do not find that the anticipatory bail granted to respondents/accused is required to be set aside in accordance with Section 439(2) of Cr.P.C. The investigation is completed and the charge-sheet has been filed. Considering the nature of dispute and the factual aspects of the matter, the respondents need not be subjected to

custodial interrogation. No case is made out for setting aside the impugned order. Hence, I pass the following order.

ORDER

Application for Cancellation of Bail No.122 of 2020 is rejected and disposed of.

(PRAKASH D. NAIK, J.)

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