

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

**915 ANTICIPATORY BAIL APPLICATION NO.1394 OF 2021
WITH APPLN/2856/2021 IN ABA/1394/2021**

1. Shajiya Shahebar d/o Sk.Musa
 2. Mohd. Adnan Sk.Musa
 3. Syd. Moin Syd. Mumtajali
 4. Syd. Shoaib Syd. Javed
 5. Sk. Musa Kwajamiya
- Applicants

Versus

The State of Maharashtra

Respondent

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Mr. Joydeep Chatterji, Advocate for the applicants.
Mr. A.V. Deshmukh, A.P.P. for respondent - State.
Mr. S.S. Shaikh, Advocate assisting the PP.

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

DATE : 07-12-2021

ORDER :

1. This is an application for pre-arrest bail in Crime No.432/2021 registered with Nanalpeth Police Station, District Parbhani for the offences punishable under Sections 420, 495, 384, 507 read with Section 34 of the Indian Penal Code (for short "I.P.C.").

2. The First Information Report (for short "F.I.R.") was registered on 22nd August 2021 by the husband of applicant No.1. It is alleged that the complainant had performed first marriage in 2005. There are four children out of said wedlock. The first wife is ailing since 2017. Due to illness, there was no physical relationship between them. The first wife and other relatives, advised him to perform second marriage. He approached Marriage Bureau and

gave his Bio-data. On 25.02.2021 complainant performed second marriage with applicant No.1. Since applicant No.1 was vomiting, she was taken to doctor for treatment. It was revealed that she was pregnant before her marriage with complainant. Thereafter the applicant No.1 created trouble in family. She demanded share in property, residence. On enquiry it was found that applicant No.1 had performed two marriages in the past. Out of previous marriage she has one son. The complainant approached second husband of applicant No.1. Both approached Mufti Vazirabad. He was informed that there was no Khulanama between Asif and applicant No.1. Thereafter applicant No.1 demanded money and flat. She threatened that complainant and others would be falsely implicated in the case. The complainant learnt that applicant No.1 had lodged complaint alleging pronouncement of Triple Talaq.

3. Learned Counsel for the applicants submitted that F.I.R. has been lodged with a view to cause harassment to the applicants. The offence under Section 495 of I.P.C. is bailable. Sections 420 and 385 of I.P.C. are not attracted in this case. There is no suppression of fact. Offence under Section 495 of I.P.C. is not made out. On account of harassment, applicant No.1 had lodged complaint on 8th June 2021 with Digra Police Station, Taluka Digra, District Yavatmal. However, F.I.R. was not registered. Police called first informant and tried for amicable settlement. Anticipating registration of F.I.R., the applicant lodged F.I.R. against applicable. After much persuasion, F.I.R. was registered vide Crime No.

1047/2021 on 31.08.2021 under Sections 498-A, 323, 504, 506 read with Section 34 of I.P.C. The applicant No.1 was married to Shahabaz Khan. This was conveyed to complainant and middle woman as well as by sharign bio-data of applicant No.1 on 09.09.2020. It was conveyed through Whats-App. The first husband gave Talaq to applicant No.1 on 11.05.2016 before marriage of applicant No.1 and informant on 25.02.2021. The applicant No.1 filed legal proceedings against second husband and sent legal notice dated 17.12.2020. Copy of notice was sent through Whats-App to complainant. Applicant No. 1 gave divorce (Khula) to second husband on 15.02.2021. Photographs of Khulanama and Talaqnama were sent by Whats-App to complainant, well before the marriage with applicant No.1. Section 384 of I.P.C. is not attracted. Applicant Nos.2 to 5 have no concern with offences. Applicant No.2 is son of applicant No.1. Applicant No.3 is nephew of applicant No.5. Applicant No.4 is son in law of applicant No.5. The applicant No.5 is father of applicant No.1. As counter-blast to the said complaint, the present F.I.R. has been registered. Previous marriages were not in subsistence. The first marriage was dissolved. Khulanama was executed respect to the second marriage.

4. Learned A.P.P. submits that the second marriage was not dissolved. Mere execution of Khulanama does not amount to dissolution of marriage. Applicants had suppressed the fact that two marriages were performed by applicant No.1 in the past. Applicant

No.1 was pregnant at the time when marriage was performed with the informant. Although offence under Section 495 of I.P.C. is bailable, on account of overt act attributed to the applicants, the offences under Sections 420 and 384 are made out against the applicants. Threats were given to the informant by applicants for withdrawing the complaint. There was demand of money by the applicants. Hence custodial interrogation is necessary.

5. Learned Counsel for the complainant also adopted the submissions of learned A.P.P. It is submitted that applicant No.1 was pregnant at the time of marriage with informant. The applicants were demanding cash and property. Complaints of threats were lodged against applicants by complainant. The accused had harassed the persons who had performed previous marriages with applicant No.1. The divorce procedure of Asif and applicant No.1 was initiated on 15.02.2021 and Khula (divorce) was completed on 09.03.2021 i.e. after the marriage of applicant No.1 with complainant. After registration of F.I.R., the accused are threatening complainant. Investigation is in progress. Second marriage of applicant No. 1 was in subsistence. Even Khulanama was not in force when the marriage was performed with the informant. Applicant No. 1 was pregnant. There is suppression of existence of previous two marriages and there was constant demand of money. Threats were issued to the complainant for withdrawing the complaint. Complaints were lodged in that regard with the police station. Hence, the application may be rejected.

6. On perusal of documents on record, it is apparent that the marriage between informant and applicant No.1 was performed on 25.02.2021. It is alleged that the second marriage of applicant No.1 was in subsistence, while marriage was performed with the informant. It is also alleged that accused are extorting money from complainant. Section 495 of I.P.C. is bailable offence. The applicant No.1 had lodged complaint on 8th June 2021 against the informant and others. Pursuant to lodging of complaint on 8th June 2021, in the meantime F.I.R. is registered by informant against applicants on 22.08.2021. On the complaint of applicant No.1 F.I.R. was registered under Sections 498-A 323, 504, 506 read with Section 34 of I.P.C. on 31st August 2021. The applicants have also contended that the first marriage was dissolved and as far as second marriage is concerned, Khulanama with second husband of applicant No.1 was initiated. This information was given to complainant. The charge of cheating and extortion is difficult to sustain. Considering the nature of offence and documents on record, there is no need of custodial interrogation of the applicants. All the documents are in possession of investigation agency. In the circumstances, the case for grant of anticipatory bail is made out. Hence, I pass the following order.

ORDER

- (i) ABA No. 1394 of 2021 is allowed.
- (ii) In the event of arrest of the applicants in connection with Crime No.432 of 2021 registered with

Nanalpeth Police Station, District Parbhani, the applicants be released on bail on executing P.R. bond in the sum of Rs. 20,000/- each, with one or more sureties in the like amount.

- (iii) The applicants shall report the Investigating Officer on 15.12.2021, 16.12.2021 and 17.12.2021 between 11.00 a.m. and 1.00 p.m. and thereafter as and when called for, till filing of the charge-sheet.
- (iv) ABA No. 1394 of 2021 and Criminal Application No.2856 of 2021 stand disposed of.

(PRAKASH D. NAIK, J.)

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