

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.141 OF 2021

Deepak Digambar Thakare

Applicant

versus

The State of Maharashtra and another

Respondents

Mr.Mohammed Zain Khan for applicant.

Mr.Kalpesh Patil i/by Vivek Rane for respondent no.2.

Mr.S.H.Yadav, APP, for State.

API Sarjerao Shendage, Dahisar Police Station, present.

CORAM : PRAKASH D. NAIK, J.

DATE : 27th September 2021

PC :

1. The applicant is apprehending arrest in CR No.1321 of 2020 registered with Dahisar Police Station for offences under Sections 498A- 406, 323, 504, 506 of Indian Penal Code.

2. The FIR is registered by the wife of applicant on 3rd September 2020 against applicant and his mother. It is alleged that the marriage was solemnized on 26th May 2019. During the marriage gold and diamond ornaments were given by the father of informant worth Rs.2,60,000/-. Several articles valued Rs.2,60,000/- were also given by the parents of informant during the marriage. After the marriage, the informant was harassed. The ornaments were not returned to her.

3. The applicant and his mother had preferred application for anticipatory bail before the sessions Court, at Dindoshi, Mumbai. The application was partly allowed. The relief was granted to the mother

of applicant. While rejecting the application of applicant it was observed that the applicant had undertaken to return Stri-dhan articles. Custodial interrogation is not required in respect of allegations of cruelty. However, since the undertaking was given on behalf of applicant, the intention to misappropriate the property is apparent. Hence custodial interrogation of the applicant is necessary.

4. Learned counsel for applicant has submitted that custodial interrogation of applicant is not necessary. Attempts to amicably settle the dispute had failed. Notice u/s.41A of Cr.PC was issued to the applicant. The applicant joined the investigation on 15th September 2020. His statement was recorded. He voluntarily admitted before the Investigating Officer that one gold bracelet, one gold chain, three gold rings, one silver plate, one silver diya, one silver glass, one silver idol of deity, total 14 items were belonging to the complainant. These items were handed over. Panchanama was recorded. The copy of statement and the panchanama has been annexed to this application. It is further submitted that in spite of handing over the articles, the applicant was threatened by the Investigating Officer that if the demands of the complainant are not fulfilled, he would be arrested. The complainant filed application vide Exhibit-3 during pendency of application for anticipatory bail preferred by the applicant. In the said application preferred by the complainant, it was alleged that she has to receive Mangalsutra, ear ring tops, certificates and other articles. The advocate representing him without verifying and consulting the applicant gave an undertaking that the articles will be returned by the applicant to the complainant. Learned sessions Judge proceeded to pass order dated 14th December 2020 directing the applicant to hand over the articles.

The articles demanded by the complainant were disputed by the applicant. In compliance of the order of the Court, the applicant visited Dahisar Police Station on 18th December 2020 and submitted the documents and concerned articles. The documents were relating to educational certificates of complainant. Panchanama dated 18th December 2020 was recorded. The applicant then changed the advocate and filed an additional affidavit mentioning the details of articles/items which were rightly claimed and handed over by the applicant to the Investigating Officer and the articles which were not known to the applicant and not in his possession and wrongly claimed by the complainant.

5. Learned APP submitted that articles are to be recovered from the applicant. He has admitted that he is in possession of the articles. Custodial interrogation is necessary.

6. Learned advocate for the complainant submitted that in spite of undertaking given by the accused he did not comply the same. The applicant has retained several articles and to recover them his custodial interrogation is necessary.

7. Apparently there are matrimonial differences between the parties. Attempts were made to dissolve the differences. The dispute could not be settled. The learned Judge while rejecting the application preferred by the applicant had observed that custodial interrogation is not required in spite of allegations of cruelty. The application was primarily rejected on the ground that although the applicant had promised to return the articles, he did not do so.

8. The FIR dated 3rd September 2020 refers to ornaments valued

at Rs.2.60 lakh which were allegedly given to the informant during her marriage. It is also alleged that other articles valued at Rs.2.60 lakh were also given to the complainant as stri-dhan during marriage. In the concluding paragraph it is, however, alleged that stri-dhan valued at Rs.8,10,000/- was not returned to her. The FIR is cryptic, does not provide the details of cruelty meted out to her. The FIR also does not disclose as to how the complainant has calculated the value of stri-dhan to be at Rs.8,10,000/-. The statement of complainant was recorded on 15th September 2020. The statement indicate that both the parties were blaming each other. It is stated that gold bracelet, gold chain, gold ring weighing 10 grams, 3 gold rings weighing 3 grams each, and other articles were returned and statement in that regard was recorded on 15th September 2020. Panchanama dated 30th September 2020 refers to return of above articles. Thereafter another statement of applicant was recorded during investigation on 18th December 2020, which also refers return of certain other articles. The additional affidavit was also placed on record by the applicant explaining the circumstances in which the undertaking was given by the applicant's advocate.

9. In view of the aforesaid factual aspects of the case, the applicant need not be subjected to custodial interrogation. Hence, I pass following order :

ORDER

- (i) Anticipatory Bail Application is allowed and disposed of;
- (ii) In the event of arrest of applicant in CR No.1321 of 2020 registered with Dahisar Police Station, Mumbai, the applicant be released on bail on his executing PR bond in the sum of Rs.25,000/- with one or more sureties in the like amount;

(iii) The applicant shall appear before Investigating Officer on 5th, 6th and 7th October 2021 between 11 am and 1 pm, and thereafter as and when called for till filing of charge sheet.

(PRAKASH D. NAIK, J.)

MST