

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL ANTICIPATORY BAIL APPLICATION NO.126 OF 2019

Shobha Nandu Kalgutkar	... Applicant
Versus	
The State of Maharashtra	... Respondent

**ALONG WITH
CRIMINAL ANTICIPATORY BAIL APPLICATION NO.127 OF 2019**

Renish Nandu Kalgutkar	... Applicant
Versus	
The State of Maharashtra	... Respondent

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Mr. Santosh S. Musale, Advocate for the Applicants in both Anticipatory Bail Applications.

Ms. Pramila H. Salvi, Advocate for Respondent No.2 in both Anticipatory Bail Applications.

Ms. Veera Shinde, APP for the Respondent – State.

Mr. Amol A. Tanpure, P. S. I. Malad Police Station, Present.

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CORAM : PRAKASH D. NAIK, J.

DATE : 16th FEBRUARY, 2021

PER COURT:

1. The applicants are apprehending arrest in C.R. No.646 of 2018 registered with Malad Police Station, Mumbai for offences under Sections 498-A, 406, 504, 315 r/w 34 of Indian Penal Code. The FIR was lodged on 11th December 2018. The ABA No.126 of 2019 is preferred by mother-in-law and ABA No.127 of 2019 is preferred by the husband of complainant. The First Information Report (for short 'FIR') mentions that on 31st October 2018, the

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husband had assaulted the complainant and she was pushed on the wall as a result of which she had sustained injury which had consequently resulted in abortion. The learned advocate for applicants submit that allegations are false. Prior to registration of FIR in question, husband had lodged a complaint with Malad Police Station on 16th November, 2018 that there is every likelihood that he would be falsely implicated in false case. It is further submitted that although the alleged incident had occurred on 31st October 2018, the FIR was lodged on 11th December, 2018. The complainant had undergone abortion on 15th November 2018. Learned counsel for applicants submitted that medical evidence on record does not show that abortion was on account of any assault attributed to the complainant.

2. In the FIR the complainant has alleged that on 1st November, 2018 her husband had assaulted her. He pushed her on the wall as a result of which she fell down on abdomen. She did not disclose this incident to her parents. The statement of Dr. Rashmi Khadkikar was recorded on 25th January, 2019. She has stated that on 13th November, 2019, the complainant had visited her for medical examination and she told her that two weeks ago she had fallen on abdomen. Doctor noticed that the foetus was dead and thereafter abortion was conducted on 15th November, 2018. The FIR was

lodged on 11th December, 2018. From the statement of the doctor it is apparent that the complainant had not disclosed the fact that her husband had pushed her on the wall as a result of which she fell on on abdomen. Although the incident had occurred on 1st November, 2018 for the first time the said allegations were made on 11th February, 2018. Vide order dated 3rd April, 2019 this Court had observed that the statement of doctor prima facie indicates that the husband had no role to play in the offence under Section 315 of Indian Penal Code. Attempts were made to resolve the dispute, however, mediation has failed.

3. Learned APP submitted that merely on the ground that the complainant had not disclosed the fact about act committed by the husband, it cannot be said that the version of the complainant is false. Apart from that role of harassment by husband is attributed to the applicants. Learned counsel for the intervenor also advanced similar submissions. She relied upon Sonography report and statement of doctor and submitted that at the time of previous examination of the complainant foetus were normal and it is only after the incident of assault the foetus was dead.

4. Considering the factual aspects as above, the applicants need not be subjected to custodial interrogation. Hence, I pass the following order:

ORDER

(i) Anticipatory Bail Application Nos. 126 of 2019 & 127 of 2019 are allowed;

(ii) In the event of arrest of the applicants in connection with in C.R. No.646 of 2018 registered with Malad Police Station, Mumbai, the applicants be released on bail on furnishing P. R. Bond in the sum of Rs.20,000/- each with one or more sureties in the like amount;

(iii) The applicants shall attend the investigating officer as and when called for.

(iv) The applicants shall not tamper with the evidence.

(v) Anticipatory Bail Application stands disposed of accordingly.

5. This order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

(PRAKASH D. NAIK, J.)