

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.698 OF 2019

1. Mr. Yashodeep Manohar Bhirud,	]	
2. Mr. Manohar Manga Bhirud,	]	
3. Mr. Digambar Vaman Lokhande	]	... Applicants

Versus

1. The State of Maharashtra,	]	
2. Tanuja Yashodeep Bhirud	]	... Respondents

Mr. Sanjay Shelke for Applicants.

Smt. Veera Shinde APP for State – Respondent No.1

Mr. Anil Lulla a/w Ms. Sanjana Prajapati for Respondent No.2.

Mr. Mahesh D. Jadhav, API, Vishnu Nagar Police Station, Dombivali,
District – Thane, present.

CORAM :- A. S. GADKARI, J.

DATE :- 28 SEPTEMBER, 2021

P. C. :-

1. This is an Application under Section 438 of Cr.P.C. for pre-arrest bail in C.R.No.I-266 of 2018 dated 14/12/2018 registered with Vishnu Nagar Police Station, Thane, under Sections 498A, 504 and 506 of Indian Penal Code.

2. Heard Mr.Sanjay Shelke, learned Advocate for the Applicants, Smt. Veera Shinde, learned APP for State and Mr. Anil Lulla, learned Advocate for Respondent No.2-first informant.

3. At the outset, it is to be noted that, on earlier at least two occasions, taking into consideration the nature of dispute *inter se* between the Respondent No.2 and the Applicant No.1, this Court tried to settle the matter amicably. However, the Applicant No.1 has adopted a stubborn stand and as per the narration of the learned Advocate for the Applicants, it clearly appeared to this Court that, the Applicant No.1 wants to settle the matter for an extremely meagre amount as one time permanent alimony / settlement. The said offer therefore was outrightly, and rightly, rejected by the Respondent No.2.

Smt. Shinde, learned APP for State and Mr. Anil Lulla, learned Advocate for Respondent No.2, therefore urged to this Court to hear the Application on merits.

4. Applicant No.1 is husband, Applicant No.2 is father-in-law and the Applicant No.3 is maternal father-in-law respectively of Respondent No.2.

The FIR is lodged by the Respondent No.2 on 14/12/2018. It is the prosecution case that, the marriage of Respondent No.2 with Applicant No.1 was solemnized on 23/11/2017 at Asangaon, District – Thane. In the said marriage, parents of the Respondent No.2 paid dowry of Rs.5 Lakhs, 6 tolas of gold and Rs.20,000/- as gift to the Applicant No.1 and his relatives. The entire expenses of the said marriage were borne by the parents of the Respondent No.2. That, after marriage the

Applicant No.1 was reluctant to keep physical relations with the Respondent No.2. When this fact came to the knowledge of the Applicant No.2 i.e. father-in-law, he made indecent advances with the Respondent No.2 by using inappropriate language. He also inappropriately touched her on one occasion. On certain occasions, the Applicant No.3 also made indecent advances with the Respondent No.2. It is further alleged that on 24/01/2018 when the Applicant No.1 was out of the house, the Applicant No.2, along with sisters of Applicant No.1, demanded dowry of Rs.2 Lakhs from the Respondent No.2 and also told her to transfer a flat situated at Pune in their name, failing which the Applicant No.2 would pour kerosene on her and set her ablaze. It is also stated that, Respondent No.2 saw naked photos of Applicant No.1 with his friend in the mobile of Applicant No.1. That on one day she witnessed that, the Applicant No.1 with unknown person in naked condition was taking selfie in the bedroom of her matrimonial house. Various other instances of mental torture and harassment have been narrated by the Respondent No.2 in the FIR. In this brief premise, the present crime is registered.

5. Mr. Sanjay Shelke, learned Advocate appearing for the Applicants, submitted that, the allegations made in the FIR are false. That, the Respondent No.2, on 03/10/2018, had lodged one N.C. complaint with local police wherein the said facts have not been narrated. He submitted that the Respondent No.2 had also lodged a complaint

dated 10/10/2018 with the Women Grievance Redressal Cell of Vishnu Nagar Police Station, Dombivli, District – Thane. He submitted that in the said detailed complaint also, what has been stated in the FIR in detail, has not been mentioned and therefore it can be presumed that the present FIR is an exaggerated version of the first informant / Respondent No.2. He submitted that the Applicant No.1 is not in possession of any of the ornaments mentioned in the FIR and therefore, there is no question of recovery of the same from the Applicant No.1. He, therefore, prayed that the Applicants may be protected by pre-arrest bail.

6. Smt. Veera Shinde, learned APP for State and Mr. Anil Lulla, learned Advocate for Respondent No.2, vehemently opposed the Application.

Learned APP pointed out statements of witnesses in the present case and submitted that, the recovery of articles mentioned in the FIR is not possible without there being custodial interrogation of the Applicants and in particular Applicant No.1. The learned APP, on instructions from API Mr.M.D.Jadhav, submitted that the charge-sheet *qua* the mother-in-law of Respondent No.2 for the offences under Sections 498A, 504 and 506 of the IPC has been filed on 27/11/2020 in the Court of competent jurisdiction.

7. A bare perusal of the FIR would indicate that, though a clear *prima-facie* offence under Section 354 of the IPC is made out

predominantly against the Applicant No.2 i.e. father-in-law, the police, at the time of lodgement of crime, did not add the said Section to the present crime and proceeded to conduct investigation into the matter.

The learned APP, on instructions from Mr. M.D.Jadhav, API, the present Investigating Officer, submitted that an, appropriate report adding Section 354 of the IPC to the present crime will be submitted before the concerned learned Magistrate within a period of one week from today. The said statement is accepted.

8. Perusal of the FIR and other record would further reveal that the Applicant No.1 has caused mental and physical harassment and/or torture to the Respondent No.2. As noted earlier, a *prima-facie* offence under Section 354 of IPC against the Applicant No.2 has been made out by the Respondent No.2.

As far as the Applicant No.3 i.e. maternal father-in-law is concerned, except a passing reference of similar nature of allegation as of Applicant No.2, no other allegations are made against him. Applicant No.3 is stated to be aged 70 years and therefore he can be protected by pre-arrest bail.

9. As far as Applicant No.1 is concerned, the amount of dowry paid by the parents of the Respondent No.2 and the gold / ornaments mentioned in the FIR are yet to be recovered from him. The allegations of taking selfie by the Applicant No.1 with an unknown person in

objectionable condition, if it is accepted to be true, in that case, the mobile phone used by the Applicant No.1 for taking the said photographs is also to be recovered from him. I find substance in the contention of the learned APP that, unless and until the Applicant No.1 is custodially interrogated, the said recovery is not possible.

10. Learned Advocate for the Applicant submitted that, on various occasions, the Applicant No.1 attended the Police Station and has cooperated in the process of investigation.

As far as the said contention of the learned Advocate for the Applicant is concerned, a useful reference at this stage can be made to a decision of Supreme Court in the case of *State Rep. By The C.B.I. Vs. Anil Sharma [(1997) 7 SCC 187]*, wherein the Hon'ble Supreme Court has held that, the custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 of the Code. In a case like this effective interrogation of suspected person is of tremendous advantage in disinterring many useful information and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual.

11. After taking into consideration the serious allegations against the Applicant Nos.1 and 2 and the necessity of custodial interrogation for recovery of the aforestated articles, this Court is of the view that the Applicant Nos.1 and 2 do not deserve to be protected by pre-arrest bail.

12. Hence the following order :

(i) Application of Applicant Nos.1 and 2 for pre-arrest bail is rejected.

(ii) Application of Applicant No.3 is allowed on the following conditions :

(a) In the event of arrest of Applicant No.3 i.e. Mr.Digambar Vaman Lokhande in C.R.No.I-266 of 2018 dated 14/12/2018 registered with Vishnu Nagar Police Station, Thane, under Sections 498A, 504 and 506 of the IPC, he be released on bail on his furnishing P.R. Bond of Rs.15,000/- (Rupees Fifteen Thousand Only) with one or two local sureties in the like amount.

(b) Applicant No.3 is directed to attend the Investigating Officer, as and when called for between 10.00 a.m. and 1.00 p.m., upon receipt of notice in writing by the concerned Investigating Officer, specifying the date and time therein, till

filing of final report under Section 173(2) of Cr.PC.
against him.

- (c) Applicant No.3 shall not tamper with the evidence
and / or pressurize the prosecution witnesses.
- (iii) Application is accordingly partly allowed.

(A. S. GADKARI, J.)