

Digitally signed by
BHARAT
DASHARATH
PANDIT
Date: 2021.12.16
10:54:14 +0530

2] Mr. Mundargi, learned Senior Counsel for the Applicant, while trying to make out a case for bail, would urge that Applicant-husband is falsely implicated in crime. He has invited my attention to the contents in the FIR, so as to claim that family members, including married sisters-in-law are implicated as accused. Further contentions are, in view of differences between mother-in-law and complainant, NC was registered in the past. Mr. Mundargi would further claim that the complainant herself has stated in the FIR that from January 2020, Applicant was not staying with the complainant. He was sleeping in the guest room. He would further invite attention of this Court to the claim of the complainant that she, alongwith her maternal uncle, left her matrimonial house on 23/8/2020. By inviting attention of this Court to the orders passed on 29/10/2020, 15/12/2020, he would claim that directions issued to the Investigating Officer are, till date, not complied with. As such, according to him, false implication of the Applicant can be inferred. Therefore Applicant is entitled for bail in the event of his arrest.

3] Learned APP assisted by Counsel for the complainant would urge

that Applicant does not deserve protection from this Court, particularly when he has divorced his two earlier wives and has taken undue advantage of strong financial and social background of the complainant. According to her, medical evidence supports the case of the prosecution in the matter of offence lodged under Section 377. Learned APP has specifically claimed that date-wise narrations are made by the complainant as regards the offence committed by the complainant and as such this Court should reject the prayer of the Applicant for grant of pre-arrest bail.

4] Learned Counsel for the complainant invited my attention to the order dated 21/10/2020 passed in ABA Stamp No.2224 of 2020 in the matter of *Ebrahim Mohd. Iqbal Lakdawala vs The State of Maharashtra*, so as to claim that medical evidence is not required as statement of the complainant is enough evidence. He further claimed that in the matter of *Mayank Pathak vs. State (Government of NCT of Delhi) and Anr.* reported in **(2015) 11 SCC 798**, Apex Court has refused to grant pre-arrest bail in the offence punishable under Section 498-A. That being so prayer for bail is liable to be rejected. He would substantiate the contention of learned APP by pointing out mode and

manner in which offence is claimed to have been lodged and made out from the attributions made in the FIR.

5] Considered rival submissions.

6] It is not in dispute that this was third marriage of the Applicant which also went in rough weather. Fact remains that, earlier two divorces of Applicant were by mutual consent. There were no complaints of offence punishable under Section 498A or under Section 377 of the IPC, a categorical statement made by learned Senior Counsel for the Applicant is accepted by this Court.

7] As such, in the aforesaid backdrop, this Court proceeds to consider the submissions.

8] In the backdrop of law laid down by the Apex Court in the matter of *Arnesh Kumar vs State of Bihar* reported in **(2014) 8 SCC 273**, in my opinion, as far as offence punishable under Section 498-A is concerned, Applicant deserves to be protected. Fact remains that complainant has named each and every family member of the

Applicant, even his married sisters are not spared. Narration in the FIR also speaks of Applicant started residing in separate room from the complainant from January 2020 and she has parted company of the Applicant from 23/08/2020 when she left matrimonial home with maternal uncle.

9] In the aforesaid background, if we appreciate the allegations made in support of case of the prosecution under Section 377 of the IPC, it can be noticed that said offence is alleged to have been committed on 15/7/2020. The said offence is admittedly not narrated to anybody though complainant had enough opportunities as she could intermittently spend time with her parents and relatives. Thereafter, complainant traveled to Singapore and claimed to have returned on 12/8/2019. Thereafter, it is claimed that on 22/8/2019, Applicant performed oral sex with the complainant. As such, statement of the complainant in the FIR is at much variance particularly in the backdrop of medical evidence produced on record. The interim orders passed by this Court on 29th October, 2020, 15th December, 2020 are self explanatory. Though medical memos are produced on record to support the offence under Section 377,

however in view of serious discrepancies noted by the Court, this court gave directions to Non-Applicant to produce detailed medical report which is not brought on record for more than one year and the matter is repeatedly adjourned at the behest of the prosecution for the same. As such, at this stage, there is material to believe that, prima facie, offence alleged under Section 377 cannot be inferred for want of sufficient medical evidence on record.

10] In the aforesaid backdrop, merely because it was the third marriage of the Applicant with the complainant and there is matrimonial discord, Applicant cannot be held to be not entitled to pre-arrest bail, particularly when there is no explanation for delayed FIR. As such, ad-interim protection ordered by this court stands confirmed.

11] In the event of the arrest of the Applicant in C.R. No.819 of 2020 registered with Andheri Police Station for the offence punishable under Sections 498A, 377, 406, 323, 504 read with Section 34 of the IPC, Applicant be released on bail on furnishing P.R. Bond in the sum of Rs. 25,000/- (Twenty Five Thousand only) with one or two sureties

in the like amount. Applicant shall attend the concerned Police Station as and when directed by the Investigating Officer. Applicant shall neither directly or indirectly influence the prosecution witnesses or tamper with the evidence. Applicant shall not directly or indirectly try to establish any contact with the complainant.

12] Application is accordingly disposed of.

(NITIN W. SAMBRE, J.)