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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 1528 OF 2021

Mohammed Suleman Farooqui Applicant.

V/s

State of Maharashtra & Anr. Respondents.

Mr. Madhulkar P. Dalvi for the Applicant.

Mr. Ajay Patil, APP for Respondent No.1/State.

Mr. Aabad H. Ponda, Senior Advocate a/w Mr. Bhomesh Bellam for Respondent No.2.

Mr. Sukumar Patil, PSI, RCF Police Station, present.

CORAM: NITIN W. SAMBRE, J.

DATE: OCTOBER 20, 2021

P.C.:-

1] Applicant, a public servant, is seeking pre-arrest bail in C.R. No. 433 of 2021 registered with RCF Police Station, Chembur for the offence punishable under Sections 498A, 377, 323, 504, 506 of the Indian Penal Code and Sections 8 and 12 of the POCSO Act.

2] On 8/6/2021, complainant Rubina lodged an FIR alleging that she got married with the Applicant on 8/7/2001 at Mahim, Mumbai during which period, her parents gifted her 60 Tolas of gold and two diamond sets and other belongings for domestic use.

3] Out of the said marriage, two children were born viz daughter Manaal on 24/11/2004 who is today aged about 16 years and son Sarmad on 7/12/2005 who is today aged about 15 years. It is alleged in the FIR that present Applicant started ill-treating the complainant since 2012 before which in 2006 the Applicant had an affair with a boy at Gorakhpur which was objected to by the Applicant. It is further alleged that in 2011, Applicant subjected his son to sexual assault by touching his private parts inappropriately. Further contention is, an amount of dowry of Rs 10 lakh was demanded for starting business out of which two Laptops and Unicorn Motor-Cycle were purchased. It is further claimed that even I-phone was also demanded. SRA Room in Dharavi area in the name of the complainant was mortgaged against the loan of Rs 5 lakhs without her consent. Since Applicant was having an affair with another lady since 2015, he continued ill-treatment to complainant and children. It is further claimed that even

on 21/3/2021, Applicant again inappropriately touched his son. As such, the offence in question.

4] Submissions of Mr. Dalvi, learned Counsel for the Applicant are, the entire contents in the FIR are completely cooked up by way of afterthought, as the Applicant had already given divorce (by pronouncing Talaq) to the complainant way back in March, 2019. It is claimed that the FIR contains such allegations which are as old as eight years for which there is no convincing explanation. He would claim that complainant has instigated children against the Applicant-father and as such perusal of the FIR depicts that Applicant is falsely implicated in the crime.

5] Countering the aforesaid submissions, learned APP supported by Mr. Ponda, learned Senior Counsel for the complainant, would urge that custodial interrogation of the Applicant is necessary for investigation as vehicle, laptop, amount and mobile of the Applicant are required to be recovered. It is also claimed that Applicant's medical examination is also required to be carried out. Mr. Ponda has drawn support from the judgment of the Apex Court in the matter of

P. Chidambaram vs. Directorate of Enforcement reported in (2019) 9 SCC 24, particularly para 60, so as to claim that Applicant's custodial interrogation is required. Mr. Ponda would also draw support from the judgment of the Apex Court in the matter of *Mayank Pathak vs. State Government of NCT of Delhi and Another* reported in (2015) 11 SCC 798.

6] Considered rival submissions.

7] From the rival contentions, it appears that Applicant and Complainant got married on 8/7/2001 and gave birth to two children viz daughter and son who are now 16 and 15 years of age respectively.

8] The FIR is based on certain incidents which are as old as of 2005, as it is claimed in vague words that Applicant was ill-treating the complainant.

9] It is further claimed that since 2015, Applicant was in relation with third lady by name Roshan. Relation of the Applicant with third lady, in my opinion, at this stage cannot be termed as illegal as second

marriage under religious law by which parties are governed is permissible. But for bald allegation, no evidence is discovered to substantiate the same. Apart from above, it is required to be noted that in March, 2019 Applicant claimed to have given Talaq to the complainant and it is subsequent thereto old issues are cropped up by the complainant for registration of the offence.

10] Though it is claimed that Applicant's custody is warranted as he might influence the victim, however it is required to be noted that grown up children have never complained about alleged incidents to any other person than the complainant. Apart from above, Applicant is very much available for investigation, particularly for medical examination. Narrations in the FIR further depict that Stridhan, if any, or belongings of the complainant can be recovered in appropriate proceedings, if any, taken out by the complainant. Rather, story narrated in the FIR appears to be unbelievable as there is no plausible explanation coming forth for delayed FIR and about suppression of the fact of divorce being given by the Applicant.

11] The marriage of Applicant with Complainant is of 8/7/2001. It

is claimed that Applicant and Complainant resided together till 6/3/2020, in spite of Talaq. The Complainant is claimed to be supported by three Brothers. However, no explanation is coming forth as to why the F.I.R. is delayed. No medical documents are placed on record about alleged assault on daughter in 2019 of which complaint is lodged in 2019. Similarly the alleged sexual assault on son in 2011, 2016 etc. is reported in 2021. The affection of father with son is sought to be co-related to 2021 incident so as to invoke provisions of POSCO. The allegations are not supported by medical evidence. The medical certification of Homeopathic Doctor is not supported by any earlier treatment given to patient. The alleged post on instagram by the Applicant in relation to kids is based on presumption. The story of the Complainant, for the aforesaid reasons appears to be unbelievable story. As such, judgment of the Apex Court in the matter of *Mayank Pathak* and *P. Chidambaram* will be of hardly any assistance. The gravity of offence cannot be inferred against the Applicant.

12] For the aforesaid reasons, Applicant's false implication in the offence cannot be ruled out.

13] As such, in my opinion, Applicant deserves to be released on bail in the event of his arrest in C.R. No. 433 of 2021 registered with RCF Police Station, Chembur for the offence punishable under Sections 498A, 377, 323, 504, 506 of the Indian Penal Code and Sections 8 and 12 of the POCSO Act on the following conditions:-

(i) Applicant shall execute P.R. Bond in the sum of Rs 15,000/- with one or more sureties in the like amount.

(ii) Applicant shall not contact the complainant or children without prior written orders from the competent court.

(iii) Applicant shall not establish directly or indirectly any contact with the children.

(iv) Applicant shall not enter the place of residence of the complainant and children.

(v) Applicant shall neither influence the witnesses in any manner nor tamper with the evidence and shall not directly or indirectly send any offending messages on social media or

otherwise.

(vi) Applicant shall attend the trial regularly.

(vii) Applicant shall within four weeks from the date of his release surrender his mobile phone to the Investigating Officer and shall cooperate with the Investigating Officer for carrying out medical examination.

14] Application is accordingly disposed of.

(NITIN W. SAMBRE, J.)