

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

ANTICIPATORY BAIL APPLICATION NO.2096 OF 2021

Naushad Dastagir Shaikh

S/o Dastagir Shaikh

.. Applicant

Vs.

The State Of Maharashtra & Anr.

.. Respondents

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Mr.R.A. Shaikh a/w Sharif khan a/w Hasan Sayed, Advocate
for Applicant.

Ms. Misbah Solkam, for Respondent No.2.

Mr. S.R. Agarkar, A.P.P. for the State-Respondent.

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**CORAM : PRAKASH D. NAIK, J.
DATE : 24thSEPTEMBER, 2021**

PC.

1. This is an application for anticipatory bail in C.R. No.585 of 2021 registered with Oshiwara Police Station for the offences under Sections 498-A, 406, 323, 324, 504, 506 of Indian Penal Code (for short "IPC"). The First Information Report (for short "FIR") was lodged on 19.07.2021.

2. The complainant has alleged that her marriage was performed with the applicant on 17.04.2004. It was the inter caste marriage. The complainant had changed her religion. The applicant and complainant were known to each other prior to

marriage and it was a love marriage. The family of the accused was against the marriage. There was continuous harassment. Child was born on 06.08.2006. The complainant had filed NC complaints repeatedly. NC complaints were lodged in 2007, 2008, 2016, 2017, 2018 and 2019. The complainant has disclosed the incidents of assault, demand of money by the applicant/accused and parting of the amount by the mother of the complainant. She was instigated to stab herself and injuries were reflected on her abdomen by use of knife. She was admitted in hospital.

3. The applicant had preferred application for anticipatory bail before the Sessions Court which has been rejected.

4. Learned advocate for the applicant submitted that the dispute, if any, had arisen out of matrimonial discord. FIR has been lodged after several years from the date of marriage. Custodial interrogation of the applicant is not necessary. The parents of the applicant were granted anticipatory bail by the Sessions Court. They had decided to leave separately and were residing at Parel. Thereafter, they shifted to another place. The torture alleged by the complainant is imaginary. There is no substance in the allegations. The complainant had alleged that she was forced to execute document. She is an advocate. It is difficult to believe that she would execute document under pressure. The applicant had co-operated with

the investigation. The applicant has filed additional documents. Memorandum of understanding was executed on 17.03.2021 between the applicant and the complainant. As per the said MOU, it was agreed that the complainant would pay Rs.17,00,000/- to the applicant and he would release 50% share in the flat which transfer in the name of complainant. He had borrowed sum of Rs.23,00,000/- from the mother of the complainant which has been returned by to her. Flat premises were purchased jointly by the complainant and the applicant. Gift deed was executed on 17.03.2021, wherein it is mentioned that the owner (complainant) would pay Rs.17,00,000/- to the applicant. The applicant has filed additional affidavit stating that he earned money and purchased a flat bearing No. 203, Second Floor, Building No.17, Sai-Vaishali Co-operative Housing Society for sum of Rs.41,60,000/- and the complainant had contributed 50%. The share certificate of the flat is standing in the joint names. The complainant was attending meeting of society being advocate. The relationship is strained since last 5 years and hence there is no physical intimacy between them. They decided to amicably part ways and hence executed MOU on 17.03.2021. The MOU specifically mentions that respondent No.2 had agreed to sign divorce petition by mutual consent for filing it in family Court. Gift deed was executed.

5. Learned APP submitted that although, the dispute is

relating to the matrimonial discord, the FIR refers to several incidents of assault and harassment. The complainant was repeatedly assaulted, abused and threatened. She was required to approach police station repeatedly. There were complaints lodged periodically to the police, which were recorded as NC complaints. The documents are apparently under force and misreading the complainant. The document indicates that the complainant is required to part the amount to the applicant. The offence recorded is of serious nature. Statement of mother of the complainant was recorded which corroborates the version of the complainant and also details about the amount borrowed by him from her. The applicant is not entitled to relief under Section 438 of Cr.P.C.

6. Mr. Solkar appearing for the complainant has opposed grant of relief to the applicant. He referred to the contents of the FIR and submitted that it is the case of repeated mental and physical harassment. Several complaints were filed by the complainant. The MOU and the gift deed which are relied upon by the applicant would suggest that said documents are misleading. The complainant has to part the amount. Although the property was purportedly purchased by both, the complainant was required to hand over the amount to the applicant as per MOU and gift deed. There is no proof that the applicant has returned the amount of Rs.23,00,000/- as his share in the property which was purchased and there is no

proof that money was returned to the complainant's mother. The applicant had admitted that he received Rs.23,00,000/- from complainant's mother. The complainant has filed affidavit opposing this application. Several photographs are annexed to this affidavit. Mr. Solkar submitted that the photographs are the evidence of the injuries sustained by the complainant. The copy of NC complaints lodged repeatedly are part of the reply which indicate that the assault was continuous. This is not a mere case of minor differences between husband and wife. Hence relief under section 438 of Cr.P.C. may not be granted to applicant.

7. I have perused the FIR and other documents annexed to this application, additional affidavit filed by applicant and affidavit in reply filed by the complainant. Although, there is long gap in registering the FIR from the date of marriage, the FIR would indicate that complainant has given details about incidents of abuse, assault and harassment which has led her to lodge complaints to the police. There are several such complaints of which cognizance was not taken and were registered as NC complaints. The complaint relating to the incident of harassment and assault were lodged by the complainant periodically which would indicate that she was continuously subjected to ill-treatment by the applicant. The documents such as MOU and the gift deed speak volume of doubt. The complainant was apparently subjected to physical

and mental cruelty. Considering the factual aspects of this matter, this is not a case where powers under Section 438 of Cr.P.C. can be exercised for granting relief to the applicant.

ORDER

- (i) Anticipatory Bail Application No.2096 of 2021 stands rejected.

(PRAKASH D. NAIK, J.)