

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

ANTICIPATORY BAIL APPLICATION NO.1760 OF 2019

Imtiyaz Husain Patel

.. Applicant

Versus

State of Maharashtra and Anr.

.. Respondents

.....
Mr.Aamir M. Shaikh, Advocate for the Applicant.

Ms.Anamika Malhotra, APP for the Respondent – State.

Mr.Santosh Mariyapal with Rukhsar Memon, Advocate for
Respondent No.2.

.....

CORAM : PRAKASH D. NAIK, J.

DATED : MARCH 12, 2021.

P.C. :

Applicant is apprehending arrest in connection with C.R.No.629 of 2019, registered with Mumbra Police Station, District-Thane, for the offences punishable under Section 498-A and 406 read with 34 of Indian Penal Code ("IPC", for short) and Section 4 of Muslim Women (Protection of Rights on Marriage) Act, 2019.

2 First Information Report ("FIR", for short) was lodged by the wife of the applicant on 1st August, 2019. The marriage

between applicant and complainant was solemnized on 7th September, 2015. It is alleged that it was the second marriage for both. After the marriage the complainant started residing at matrimonial home with her husband, mother-in-law, father-in-law, brother-in-law and sister-in-law. The husband demanded money for purchasing motorcycle. Complainant borrowed Rs.50,000/- and from that amount applicant purchased motorcycle. The complainant had borrowed amount of Rs.50,000/-, from her friend. The applicant then sold motorcycle to his friend and the amount borrowed by complainant was returned to her friend. Thereafter, applicant went abroad for job. Complainant was then harassed by her mother-in-law and sister-in-law. They told her to bring ornaments and money from her parents. She was abused and mentally tortured. She did not disclose this to her father, since, he was poor. In October 2016, applicant returned home. Due to quarrels between complainant, her mother-in-law and sister-in-law, the applicant dropped her to parents home in November 2016, and told her to stay there. He again went to Abu Dhabi for job. On 18th August, 2017, applicant again returned from Abu Dhabi. He resided with complainant at her parents home. He again demanded money for motorcycle. Her father borrowed Rs.84,000/-, and purchased motorcycle for him. In

September 2017, while they were staying together, complainant learnt about love affair of applicant with a lady residing at Vikhroli. She questioned applicant about it. Applicant abused and assaulted her. He demanded gold ornaments given to her by father for clearing his debt. Since she was not bringing money applicant called her on cellphone and pronounced triple Talaq on 30th November, 2018. He also sent message about it on WhatsApp. Applicant left the house. Complainant was pregnant. She delivered child on 6th February, 2019.

3 Applicant had preferred an application for anticipatory bail before the Sessions Court, which has been rejected. However, mother-in-law of the complainant and married sister-in-law were granted anticipatory bail by the Sessions Court.

4 Learned advocate for applicant submitted that false complaint has been lodged against applicant. The allegations are concocted. The dispute arises out of matrimonial discord. The co-accused were also attributed role of harassment. They were granted anticipatory bail by the Sessions Court. The applicant has not demanded money, ornaments or motorcycle from

complainant. The Unicorn motorcycle referred to in FIR belongs to father of complainant. It is in his possession. Custodial interrogation of the applicant is not necessary. The allegations in complaint are vague. Applicant had cooperated with the investigation.

5 Learned APP submitted that the nature of harassment is mentioned in the FIR. The complainant was harassed, abused and assaulted. Learned counsel for the intervenor had also opposed the application for anticipatory bail. It is submitted that the complainant was continuously harassed. The applicant pronounced triple Talaq. The complaint was filed reply opposing application. The applicant demanded money for personal purpose. Applicant had affair with a lady. The accused took away ornaments of complainant without her knowledge and not returned the same.

6 Applicant was granted interim protection by this Court vide order dated 13th August, 2019. Applicant was directed to report investigating officer on 20th, 21st and 22nd August, 2019, between 10:00 a.m. and 12:00 noon. It is not disputed that applicant had attended the police station in pursuant to the order passed by this Court. The allegations spelt out in the FIR are

arising out of matrimonial discord between the parties. Co-accused are granted protection by the Session Court. In the FIR it is alleged that marriage was performed on 7th September, 2015. The applicant demanded money for motorcycle. The complainant borrowed money from her friend. The amount was returned to her friend after selling motorcycle. After about one month from marriage, applicant went to Abu Dhabi for employment. Thereafter, the family members allegedly demanded money and ornaments from complainant. The mother-in-law and sister-in-law are granted anticipatory bail by Sessions Court. Thereafter, complainant was dropped to her parents home. The applicant went abroad. When he returned he stayed with complainant. Thereafter, he was questioned by complainant about his affair. Father of complainant allegedly purchased motorcycle for him. On 30th November, 2018, applicant pronounced triple Talaq on phone and sent message. The FIR was lodged on 1st August, 2019. In the FIR, there is no allegation that the accused had retained the ornaments of complainant. Learned Sessions Judge in the order dated 5th August, 2019, has observed that there are no specific allegation against co-accused and their custodial interrogation is not necessary. As far as applicant is concerned, it was observed that, applicant had pronounced triple Talaq. It is

necessary to seize the mobile handset from which he had allegedly sent the WhatsApp message. For recovery of same custody of applicant is necessary. The applicant was directed to appear before investigating officer by this Court while granting interim relief. The Sessions Court has further observed that, the motorcycle has been taken in possession by Finance Company for non payment of loan installments. The father of informant was constrained to sell the same for repayment of loan. In view of factual aspects of this matter, custodial interrogation of applicant is not necessary.

7 Hence, I pass the following order:

:: ORDER ::

- (i) Anticipatory Bail Application No.1760 of 2019, is allowed;
- (ii) Interim order dated 13th August, 2019, is confirmed;
- (iii) In the event of arrest of the applicant in connection with C.R.No.629 of 2019, registered with Mumbra Police Station, District-Thane, the applicant be

released on bail on executing P.R. Bond in the sum of Rs.25,000/-, with one or more sureties in the like amount;

- (iv) Applicant shall appear before the investigating officer, as and when called for, till filing of the charge - sheet;
- (v) Anticipatory Bail Application No.1760 of 2019, stands disposed of accordingly.

(PRAKASH D. NAIK, J.)