

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION (ABA) NO.792 OF 2020

(Shaikh Mukhtar s/o Gaffar Shaikh Vs. The State of Maharashtra thr. PSO PS
Yashodharanagar, Nagpur)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.*

Court's or Judge's orders.

Mr. Shaikh Sabahat Ullah, Advocate for Applicant.
Mr. M.K. Pathan, APP for Non-Applicant/State.
Mr. M.R. Khan, Advocate for Complainant.

CORAM: ROHIT B. DEO, J.

DATE: 6th JANUARY, 2021.

Criminal Application (APPP) No.18/2021:

The applicant is the wife and informant.

2. The application is allowed. The applicant is permitted to assist the prosecution.

Criminal Application (ABA) No.792/2020:

The applicant is apprehending arrest in Crime 878/2020 registered with Police Station Yashodharanagar, Nagpur for offence punishable under sections 313, 498-A, 323, 504 read with section 34 of the Indian Penal Code and section 4 of the Dowry Prohibition Act, 1961.

2. The crime is registered on the basis of report dated 13.12.2020 lodged by Smt. Reshma Anjum Shaikh Mukhtar, who is the second wife of the applicant.

3. It is common ground that the applicant and the informant married on 26.03.2017. It appears, that certain dispute arose, the informant initiated proceedings under the Protection of Women from Domestic Violence Act, 2005 and the mediator/counselor successfully persuaded the parties to settle the dispute. The informant approached the learned Magistrate in 2018 and the dispute was settled on 25.07.2019.

4. I have perused the material in the case diary minutely. The allegation that the applicant demanded Rs.10,00,000/- from the parents of the informant, and that the applicant physically ill-treated her to pressurize her to succumb to the demand, is clearly inconsistent with the earlier version that the applicant demanded dowry of Rs.35,000/-. Be that as it may, there is absolutely nothing in the case diary except the report which would throw any light on the rival versions. It does not appear that the Investigating Officer has recorded the statement of any independent witness or for that matter statements of the family members of the informant.

5. The most serious allegation is that the applicant and the first wife administered certain pills and caused the abortion of fetus. Perusal of the case diary, reveals that it was the informant who approached Dr. Sonarkar on 15.09.2020 and the Doctor states that the informant disclosed that she had consumed certain pills to cause abortion. The report alleges that the pills were administered on 06.09.2020. In that sense, lodging a complaint after

more than three months, would ordinarily impel the court to test the said version with caution. It is obviously for the trial court to come to an appropriate conclusion after the evidence is led. The observation *supra* is made only for the limited purpose of deciding the entitlement to pre-arrest protection.

6. I am satisfied that custodial interrogation is not necessary. The investigation is not likely to be hampered if the applicant is protected. Interim protection granted vide order dated 23.12.2020 is made absolute with the only modification that till the filing of the charge-sheet, the applicant shall attend concerned police station as and when required by the Investigating Officer. The applicant shall not make any attempt to influence the witnesses or to pressurize the complainant or to otherwise obstruct the course of justice.

JUDGE