

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

CRIMINAL APPLICATION (APPL) NO. 17 OF 2021

(Sundarsingh S/o Devsingh Rathod Vrs. State of Maharashtra, through Police Station Officer, police Station, Darwa, Dist. Yavatmal and another)

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

Court's or Judge's orders

Shri S.R.Kadam, Advocate for the applicant.
Shri N.R.Rode, APP for the non-applicant 1.

CORAM : ROHIT B. DEO, J.

DATE : 03-03-2021

This application is preferred, purportedly under Section 439(2) of the Code of Criminal Procedure, 1973 ("Code"), assailing the order dated 19th December, 2020 rendered by the Additional Sessions Judge, Darwa in Misc.Criminal Bail Application 201 of 2020 whereby the non-applicant 2 is granted pre-arrest protection in connection with First Information Report 947 of 2020 registered under Section 498-A, 306 read with Section 34 of the Indian Penal Code.

2. During the course of the submissions, the learned counsel Mr. Kadam for the applicant has argued that the Sessions Judge who granted pre-arrest protection has not disclosed the details of the documents. This submission is made in the context of the observation in the order impugned that the case diary and documents available on record are perused.

3. Mr. Kadam, learned counsel for the applicant

would submit that the Supreme Court has held that it is not sufficient to state that the documents are perused and that the Judge must spell out the details of the documents. The submission of the learned counsel Mr. Kadam is noted as a courtesy to the counsel. While deciding the pre-arrest protection, and when the investigation is not complete and is on going, the accused is not entitled to know the contents of the case diary. The learned Judge deciding the pre-arrest application is not expected to disclose the names of the witnesses or the minute details of the documents which are perused. Disclosures at the stage of on going investigation is bound to adversely effect the investigation.

4. The learned Sessions Judge has noted that it is not even the case of the prosecution that during the period of 10 years preceding the death, the deceased accused her sister-in-law-non-applicant 2 herein, of subjecting the deceased to cruelty. The learned Sessions Judge further noted that the non-applicant 2 is residing at Darwa and that she is neither a flight risk nor would she be in a position to influence the investigation.

5. In my considered view, the discretion exercised by the learned Sessions Judge is neither arbitrary nor whimsical. Indeed, the view taken is the only view which any reasonable person would have taken.

6. All that is filed alongwith the application is the copy of the report lodged by applicant Sundersingh Rathod on 7th December, 2020. The non-applicant 2 is not named. No specific role is attributed to non-applicant 2 in the report. The report starts with a general accusation which is vague and omnibus in nature, that the deceased daughter of the applicant was ill-treated by her father-in law, mother-in-law, husband, brother-in-law and sisters-in-law who suspected the character of the deceased and who further accused her of being illiterate and blamed her for the inadequate dowry. *De hors* the omnibus reference, in the entire report, there is not even a whisper that the non-applicant 2 lady did any act which can be construed as instigation to commit suicide.

8. I was inclined to impose exemplary costs in view of the unwarranted and uncharitable statements made, and grounds raised, which suggest that the learned Judge did not understand basic human emotions and the fact that the deceased was the daughter of the complainant. It is alleged in the application that the order is passed illegally and mechanically and that the learned Judge has not even once mentioned as to which documents were referred to and upon seeing which entries in the case diary made the learned Judge to extend the pre-arrest protection.

9. After due thought I have decided not to impose exemplary costs. The first reason is that the

complainant is a senior citizen who has lost his daughter and the second reason is that the complainant cannot really be blamed for the manner in which the application is drafted since it is not the litigant but the lawyer who is expected to know the law. In the interest of maintaining judicial restraint, I make no further observations.

10. The application is dismissed.

JUDGE

sknair