

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 187 OF 2022

Shweta Akash Mahindrakar

..PETITIONER

VERSUS

State of Maharashtra and Another

..RESPONDENTS

....

Mr. R.S. Deshmukkh, Senior Advocate a/w Mr. G.A. Kulkarni, Advocate i/b
Mr. D.R. Deshmukh, Advocate for petitioner
Mr. S.P. Sonpawale, A.P.P. for respondent no.1 - State

....

CORAM : R.G. AVACHAT, J.

DATED : 21st FEBRUARY, 2022

PER COURT :

1. Heard.
2. The challenge in this petition is to an order dated 29th November, 2021 passed below application Exhibit 19 in Criminal Bail Application No. 97 of 2021. The said application was moved by the petitioner herein, who is the first informant of the crime bearing C.R. No. 0141 of 2021 registered for the offences punishable under Sections 498A, 406, 323, 504, 506 read with Section 34 of the Indian Penal Code ('I.P.C.').
3. The contentions of the petitioner-wife are that her husband (A-1), who is in Indian Navy, stationed at New Delhi, has forged his signatures to secure bail in the very matter. The Court concerned was called upon to

invoke jurisdiction under Section 340 of the Code of Criminal Procedure ('Cr.P.C.') for the offence enumerated in Section 195(1)(b) of Cr.P.C. In short, it is the contention of the petitioner-wife that on the given date her husband (A-1) was present at his workplace. The affidavit shown to have been sworn by him before the Notary Public and signatures appearing on *Vakilpatra* have all been forged and as such he has committed fraud on the Court as well.

4. Inquiry under Section 340 of the Cr.P.C. in relation to the offences viz. punishable under Sections 193 to 196, 199, 200, 205, 211 and 228 of the I.P.C. was sought to be made by the Court concerned.

5. Section 340 of the Cr.P.C. reads thus :-

"340. Procedure in cases mentioned in section 195.

(1) When upon an application made to it in this behalf or otherwise any Court is of opinion that it is expedient in the interest of justice that an inquiry should be made into any offence referred to in clause (b) of sub-section (1) of section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary,—

(a) record a finding to that effect;

(b) make a complaint thereof in writing;

(c) send it to a Magistrate of the first class having jurisdiction;

(d) take sufficient security for the appearance for the accused before such Magistrate, or if the alleged offence is non-bailable and the Court thinks it necessary so to do send the accused in custody to such Magistrate; and

(e) bind over any person to appear and give evidence before such Magistrate.

(2) The power conferred on a Court by sub-section (1) in respect of an offence may, in any case where that Court has neither made a complaint under sub-section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the Court to which such former Court is subordinate within the meaning of sub-section (4) of section 195.

(3) A complaint made under this section shall be signed,—

(a) where the Court making the complaint is a High Court, by such officer of the Court as the Court may appoint;

(b) in any other case, by the presiding officer of the Court.

(4) In this section, "Court" has the same meaning as in section 195."

6. The petitioner herein moved application Exhibit 19 with following averments :-

The signature of her husband (A-1) appearing on the affidavit is not of himself. She was conversant with the handwriting and signature as well. He would sign by using his entire surname and initial of his name, while the signature in question is elaborative and lengthy. She also relied on the photocopy of the passport and photocopy of application on service of driving license and PAN card of her husband (A-1). In short, she mean to say that the signature on the bail application was of someone else and not that of her husband (A-1). It is also her case that she made enquiry in this regard with the higher ups of her husband and came to know that on the given date he was at his workplace in New Delhi, while the documents in question shown

to be signed by him at Ahmednagar. She relied on a text of what's app message forwarded to her by the Commanding Officer of Indian Navy at New Delhi stating therein that her husband was on duty on the given date.

7. In short, it is the case of the petitioner that her husband, for securing bail, forged certain documents and placed them in a judicial proceeding viz. application for bail before the Court, and as such committed offence as has been covered under Section 195(1)(b)(ii) of the Cr.P.C. It is, therefore, necessary to reproduce the said provision below :-

“195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.

(1) No Court shall take cognizance -

(b)(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court”

8. From the aforesaid provision it would be crystal clear that for invoking Section 340 read with Section 195 of the Cr.P.C. in respect of the offences described in Section 463 or punishable under Sections 471, 475 or 476 of the I.P.C. such offences should have been committed in respect of a document produced/given in evidence in a proceeding in a Court. The words

‘produced/given’ appearing above are in past tense. The same suggests that such offences must have been committed in relation to the document which is part of any judicial proceeding pending before a Court. Meaning thereby, the document in relation to which the offence is said to have been committed, must have been in custody of the Court. It is again reiterated that the alleged offence should be committed in relation to the document which has already been part of a judicial proceeding. As per the averments in the application Exh.1, the alleged forgery was committed before filing an application for bail. Meaning thereby, the alleged offence took place before the judicial proceeding in the nature of application for bail was initiated by the respondent – husband. Section 340 of the Cr.P.C. would, therefore, have no application.

9. This Court, therefore, finds no reason even to issue notice of this proceeding to the respondent. Criminal writ petition, therefore fails. Same stands disposed of accordingly.

(R.G. AVACHAT, J.)

SSD