

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

ANTICIPATORY BAIL APPLICATION NO. 320 OF 2022

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| 1. Avinash s/o. Tejrao Adhav,
Age.32 years, Occ. Private job,
R/o. Chintamani CHS MAHADA Colony,
Chandvali Saki Naka, Mumbai. | .. | Applicants
[ori.accused
Nos.1 to 3] |
| 2. Pushpabai w/o. Tejrao Adhav,
Age. 51 years, Occ. Household,
R/o. As above. | | |
| 3. Tejrao s/o. Sheshrao Adhav,
Age.60 years, Occ. Private job,
R/o. As above. | | |

Versus

State of Maharashtra Through Modha Police Station, Parbhani, Tq. & Dist. Parbhani.	..	Respondent
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Mr.K.R. Doke, Advocate for the applicants.

Mr.A.M. Phule, APP for the respondent/State.

CORAM	:	SMT. VIBHA KANKANWADI, J.
RESERVED ON	:	29.03.2022
PRONOUNCED ON	:	19.04.2022

PC. :-

01. The applicants are apprehending their arrest in connection with Crime No.46 of 2022 registered with New Mondha Police Station, Parbhani, Dist. Parbhani, for the offences punishable under section 420 read with

section 34 of the Indian Penal Code (IPC).

02. Heard Mr. K.R. Doke, learned Advocate for the applicants and Mr.A.M. Phule, learned APP for the respondent/State.

03. It has been vehemently submitted on behalf of the applicants that applicant No.1 is the husband and applicant Nos.2 and 3 are the in-laws of the informant. She has already lodged an FIR vide CR No.984 of 2020 with Saki Naka Police Station, Mumbai. The charge-sheet has been filed with learned 66th Metropolitan Magistrate, Andheri, Mumbai for the offences punishable under sections 498-A, 494, 495, 323, 504 of the IPC. In the said FIR same contentions, which have been taken in the present FIR, have been stated and therefore it would amount to the doctrine of double jeopardy for the applicants to undergo the process again. The offence under section 420 of the IPC is absolutely not made out against the applicants. The marriage between the informant and applicant No.1 was solemnized on 19.06.2020 at Parbhani and the relationship is still subsisting. It is alleged that within 15 days of the marriage, the informant came to know from Facebook message that applicant No.1 was previously married and has child and there is no divorce between

them. When this part of the allegations are also stated as cruelty covered under section 498-A of the IPC in the earlier proceedings, then the second proceedings is not maintainable. She has also taken up proceedings under the Protection of Women From Domestic Violence Act with the same contentions. The custodial interrogation of the applicants is not required. The applicants will abide by the terms of the bail.

04. The learned Advocate for the applicant has relied on the decision in Navnit K. Mehta Vs. State of Maharashtra and Anr. 2018 (3) ABR (Cri) 239, wherein it has been stated that the second complaint filed against the applicant on same set of fact and against same persons and therefore custodial interrogation is not necessary. The grant of anticipatory bail in subsequent complaint is proper.

05. Learned APP has strongly opposed the application and submitted that it was specifically stated by Saki Naka Police Station that offence under section 420 of the IPC will not be entertained by them in view of the fact that the offence of cheating has not taken place within the jurisdiction of Saki Naka Police Station and she would be entitled to lodge FIR only for section

498-A and other sections. She was constrained to file application under section 156(3) of the Cr.P.C. Thereafter, the offence under section 420 of the IPC has been registered. Therefore, it cannot be said that there is any bar for the second FIR. The offences are different. In spite of being married earlier, applicant No.1 got married to the informant and applicant Nos.2 and 3 being father and mother of applicant No.1, though having knowledge about the earlier marriage of son, had taken part in the marriage between applicant No.1 and the informant and thereafter she has been treated with cruelty and therefore, prima facie, offence can be said to be made out against all the applicants. They do not deserve discretionary relief.

06. At this stage, this Court may not go much deep into the aspect as to whether second FIR is maintainable or not, but prima facie things will have to be considered. It has been stated in the petition itself by the applicants that the charge-sheet against them has been filed under section 498-A, 494, 495, 323, 504 of the Indian Penal Code. Section 420 of the IPC has not been included in that and then in this FIR it has been clearly stated by the informant that the police refused to add section 420 of the IPC and therefore she had lodged application for investigation under section 156(3) of the

Cr.P.C. which has been allowed by the concerned Magistrate. Therefore, practically even if the contents may be including the contents in the earlier complaint, yet the second FIR appears to be maintainable and it will not amount to double jeopardy because there is no acquittal of the applicant in the earlier instituted case.

07. The contents of the FIR would disclose that it was represented to the informant and her family members that applicant No.1 is unmarried and therefore she might have given consent for the marriage, but then after 15 days of the marriage itself, it was revealed to her that applicant No.1 was already married and had child.

08. The custodial interrogation of the applicant is not necessary. They have fixed place of their abode and therefore they deserve to be protected under section 438 of the Cr.P.C. Hence, the following order :-

ORDER

- i) The application stands allowed.
- ii) In the event of arrest of applicants viz. (1) Avinash s/o.

Tejrao Adhav (2) Pushpabai w/o. Tejrao Adhav and (3) Tejrao s/o. Sheshrao Adhav, in connection with Crime No.46 of 2022 registered with New Mondha Police Station, Parbhani, Dist. Parbhani, for the offence punishable under section 420 read with section 34 of the Indian Penal Code, they be released on P.R. bond of Rs.30,000 (Rupees Thirty Thousand) with two sureties of Rs.15,000/- (Rupees Fifteen Thousand) each.

iii) They shall not tamper with the evidence of the prosecution in any manner.

iv) They shall not indulge in any criminal activity.

[SMT. VIBHA KANKANWADI, J.]