

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

955 ANTICIPATORY BAIL APPLICATION NO.367 OF 2022

ANMOL MADHUKAR DIVEKAR

VERSUS

THE STATE OF MAHARASHTRA

...

Mr. M.L. Muthal, Advocate for the applicant

Mrs. V.N. Patil-Jadhav, APP for the respondent

...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 06th MAY, 2022

ORDER :

1 The applicant is apprehending his arrest in connection with Crime No.59/2022 dated 25.02.2022 registered with Mukundwadi Police Station, Dist. Aurangabad City, for the offence punishable under Section 3, 4 of the Dowry Prohibition Act, 1961 and under Section 323, 498-A, 504, 506 read with Section 34 of the Indian Penal Code, 1860. The applicant is the husband of the informant. They got married on 17.05.2018. They have one daughter aged one year and six months.

2 Heard learned Advocate Mr. M.L. Muthal for the applicant and

learned APP Mrs. VN. Patil-Jadhav for the respondent. In order to cut short, it can be said that they have argued in support of their respective contentions.

3 Perusal of the First Information Report would show that informant, who is the wife of the applicant, contends that it was their love marriage and still it is stated that the applicant had demanded 10 tolas of gold and high quality furniture, at the time of marriage. When the relatives of the informant's father intervened, it was told that the informant herself is Mechanical Engineer working at Taiwan, therefore, there is no question of giving dowry. However, the matter was settled at one and half tola gold locket, one gram gold ring and the marriage was performed in a luxurious way. She states that since the parents-in-law had opposed the marriage since the day of marriage, they started harassing her. They used to give pinching words about non payment of dowry. She was asked to do domestic work. It was the desire of the in-laws that she should come down to Aurangabad and take upon the service, however, it was not possible and, therefore, after they were persuaded, the applicant as well as informant went to Taiwan. Thereafter, the mother-in-law used to give messages to the applicant stating that informant is ugly looking girl and thereupon applicant started mentally harassing her. When she came to Aurangabad, again she was harassed.

Thereafter, she delivered a child. She developed some medical problem and, therefore, she left the service on the medical ground and since then it is her say that the applicant has changed his behaviour. The husband brought her to India in 2021 and it is stated that the father-in-law started saying that since she is now unable to bring money by taking up service she should bring amount of Rs.50,00,000/- from her parents, otherwise she should give divorce to the applicant. She says that she was assaulted on the said ground at about 4.30 p.m. on 27.07.2021 and was driven out of the house. She had given a complaint application to the Women's Complaint Redressal Forum, however, settlement could not be effected and, therefore, she lodged the report.

4 In fact, taking into consideration the allegations in the First Information Report and the sections those have been invoked of the Indian Penal Code, it is now necessary to see whether the physical custody of the applicant is necessary or rather his arrest itself is necessary. The applicant had approached Sessions Court, Aurangabad along with his parents and sister. Parents, brother, uncle and aunt of applicant have been granted anticipatory bail by the learned Additional Sessions Judge, however, the application of the husband has been rejected on the ground that the applicant has filed divorce petition and the contents of the divorce petition have been

considered. It has been stated that if the divorce petition would not have been filed there is every possibility of patch up. However, he has gone one step ahead by filing divorce petition. According to the learned Additional Sessions Judge, this amounts to cruelty or is a ground to reject the application. In fact, what should be seen by the Sessions Judges/Additional Sessions Judges when the offence alleged is under Section 498-A, 323, 504, 506 read with Section 34 of the Indian Penal Code is required to be revisited, because there cannot be a casual approach while dealing with such kind of applications. Paragraph Nos.3 and 5 of the order passed by learned Additional Sessions Judge covers what was the stand of the prosecution/for investigating agency. It is stated that the nature of the applicants is aggressive and they had treated the informant with cruelty. It is also stated that if the applicants are enlarged on bail, there is strong possibility of tampering with the prosecution witnesses. Certainly, these are not the criteria, those are required to be seen, as per the decision in **Arnesh Kumar vs. State of Bihar, 2014(8) SCC 273**. In fact, **Arnesh Kumar** (supra) was the case dealing with offence under Section 498-A of the Indian Penal Code, but the directions given in the same were equally applicable to the offences in which the punishment is provided up to seven years. Interpretation of Section 41 and 41-A of the Code of Criminal Procedure made by the Hon'ble Supreme Court is binding on all the Courts in the country. After considering

the provisions of Section 41 of the Code of Criminal Procedure Hon'ble Supreme Court held thus -

“From a plain reading of the aforesaid provisions, it is evident that a person accused of an offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years with or without fine, cannot be arrested by the police officer only on his satisfaction that such person had committed the offence punishable as aforesaid. A police officer before arrest, in such cases has to be further satisfied that such arrest is necessary to prevent such person from committing any further offence; or for proper investigation of the case; or to prevent the accused from causing the evidence of the offence to disappear; or tampering with such evidence in any manner; or to prevent such person from making any inducement, threat or promise to a witness so as to dissuade him from disclosing such facts to the court or the police officer; or unless such accused person is arrested, his presence in the court whenever required cannot be ensured. These are the conclusions, which one may reach based on facts.

In pith and core, the police officer before arrest must put a question to himself, why arrest? 'Is it really required?' 'What purpose it will serve?' 'What object it will achieve?' 'It is only after these questions are addressed and one or the other conditions as enumerated above is satisfied, the power of arrest needs to be exercised. In fine, before arrest first the police officers should have reason to believe on the basis of information and material that the accused has committed the offence. Apart from this, the police officer has to be satisfied further that the arrest is necessary for one or the more purposes envisaged by

sub-clauses (a) to (e) of clause (1) of Section 41 Cr.P.C., 1973.”

Thereafter, provisions of Section 41-A of the Code of Criminal Procedure as per Section 6 of the Code of Criminal Procedure, 1973 (Amendment) Act 2008 was considered and while interpreting it, it has been observed that -

“The aforesaid provisions makes it clear that in all cases where the arrest of a person is not required under Section 41(1) Cr.P.C., 1973 the police officer is required to issue notice directing the accused to appear before him at a specified place and time. Law obliges such an accused to appear before the police officer and it further mandates that if such an accused complies with the terms of notice he shall not be arrested, unless for reasons to be recorded, the police officer is of the opinion that the arrest is necessary. At this stage also, the condition precedent for arrest as envisaged under section 41 Cr.P.C., 1973 has to be complied and shall be subject to the same scrutiny by the Magistrate as aforesaid.”

“We are of the opinion that if the provisions of Section 41 Cr.P.C., 1973 which authorises the police officer to arrest an accused without an order from a Magistrate and without a warrant are scrupulously enforced, the wrong committed by the police officers intentionally or unwittingly would be reversed and the number of cases which come to the Court for grant of anticipatory bail will substantially reduce. We would like to emphasise that the practice of mechanically reproducing in the case diary all or most of the reasons contained in Section 41 Cr.P.C., 1973 for effecting arrest be discouraged and

discontinued.”

The directions were issued in that case and while issuing those directions the purpose for which those directions were given were stated as to ensure that the police officer do not arrest the accused unnecessarily and the Magistrate do not authorize detention casually and mechanically. Further, in the catena of Judgments these directions have been followed and reiterated by Hon’ble Apex Court as well as various High Courts including this Court. Therefore, it is bounden duty of the police officers to observe those directions given in **Arnesh Kumar** (supra), so also, there is equal duty on the Magistrates, before whom the report under Section 167(1) of the Code of Criminal Procedure is filed. It can be further said, taking into consideration those directions that even the learned Sessions Judges as well as Additional Sessions Judges should consider those directions when such an offence is involved and whether the say given by the Investigating Officer is in consonance of Section 41 of the Code of Criminal Procedure and the directions in **Arnesh Kumar** (supra).

5 This Court in **Imran Ali s/o Ashraf Ali vs. The State of Maharashtra in Anticipatory Bail Application No.237 of 2022** decided on 04.04.2022 has taken the ratio laid down in **Arnesh Kumar** (supra), **Social Action Forum for Manav Adhikar and another vs. Union of India Ministry of**

Law and Justice and others, AIR 2018 SC 4273, Rajesh Sharma and others vs. State of U.P. and another, AIR 2017 SC 3869 and other pronouncements by the Hon'ble Apex Court and observed thus -

“7 At the cost of repetition, it can be said that even at the time of dealing with the bail application under Section 438 of the Code of Criminal Procedure the Sessions Judge or Additional Sessions Judge, whoever is dealing with the matter, should consider whether all these directions and ratios laid down in **Arnesh Kumar** (supra), **Rajesh Sharma** (supra) and **Social Action Forum** (supra) are followed in any case or not. There cannot be simple rejection of the application on any ground.”

6 Filing of divorce petition by the husband cannot be taken as an act of cruelty or a ground for rejecting the anticipatory bail. Further ground is that certain articles valuable as well as general articles of the informant are stated to be with the applicant. In fact, she can get it under the provisions of Domestic Violence Act, it need not be seized.

7 As per **Joginder Kumar vs. State of U.P., (1994) 4 SCC 260**, there should be some reasonable justification in the opinion of the officer effecting the arrest that such arrest is necessary and justified. Here, this element is missing. It is also to be noted that the Courts should not get carried away with the desire of a party to see the other behind bars. It may be sometimes

to settle the personal score and, therefore, the Courts should be on guard as to whether really the arrest is necessary. Only prima facie case against the person is also not a criterion to be looked into. But together with whether the arrest is necessary and as stated in **Arnesh Kumar** (supra), not only the police officer but also the learned Sessions Judge or Additional Sessions Judge dealing with an application under Section 438 of the Code of Criminal Procedure should question 'why arrest', 'is it really require', 'what purpose it will serve', 'what object it will achieve'. Therefore, those observations in **Arnesh Kumar** (supra) will have to be considered by such Courts.

8 In view of the aforesaid discussion, the interim protection granted earlier to the applicant deserves to be confirmed. Accordingly, it is confirmed. Hence, following order.

ORDER

1 Application stands allowed.

2 The ad-interim protection, granted by this Court earlier to applicant vide order dated 29.03.2022, is hereby confirmed and made absolute. In other words, if the applicant is not formally arrested, in the event of arrest of the applicant viz. **Anmol Madhukar Divekar**, in connection

with Crime No.59/2022 dated 25.02.2022 registered with Mukundwadi Police Station, Dist. Aurangabad City, for the offence punishable under Section 3, 4 of the Dowry Prohibition Act, 1961 and under Section 323, 498-A, 504, 506 read with Section 34 of the Indian Penal Code, 1860, he be released on P.R. Bond of Rs.30,000/- (Rupees Thirty Thousand only) with two solvent sureties of Rs.15,000/- (Rupees Fifteen Thousand only) each.

3 Applicant shall not indulge in any criminal activity nor he should tamper with the evidence of the prosecution, in any manner.

4 Applicant shall cooperate with the investigation and shall remain present before the Investigating Officer, on every Friday between 10.00 a.m. to 02.00 p.m., till filing of charge sheet.

5 Applicant shall not leave the country without the permission of the Sessions Judge, Aurangabad.

(Smt. Vibha Kankanwadi, J.)