

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

ANTICIPATORY BAIL APPLICATION NO.523 OF 2022

Krushna Prakash Khande,
Age-27 years, Occu:Job,
R/o-Flat No.12, Yogeshwari Apartment,
Hanumanwadi, Panchwati, Nashik

...APPLICANT

VERSUS

1) The State of Maharashtra,
Through Police Inspector,
Kopargaon Police Station,
Tq-Kopargaon, Dist-Ahmednagar,

2) Vaishnavi Krushna Khande,
Age-22 years, Occ:Household,
R/o-Vivekanand Nagar, Balaji
Anger No.2, Plot No.105, First Floor,
Kopargaon, Tq-Kopargaon,
Dist-Ahmednagar.

...RESPONDENTS

...
Ms. Sheetal V. Salunke Advocate for Applicant.
Mr. A.M. Phule, A.P.P. for Respondent No.1 – State.
Ms. A.N. Ansari Advocate for Respondent No.2.
...

CORAM: SMT. VIBHA KANKANWADI, J.

DATE : 5th AUGUST, 2022

ORDER :

1. The applicant is apprehending his arrest in connection with

Crime No.318 of 2021 dated 21st October 2021 registered with Kopargaon City Police Station, Kopargaon for the offence punishable under Sections 498-A, 377, 323, 313, 312, 504, 506 read with Section 34 of the Indian Penal Code.

2. It will not be out of place to mention here that the applicant had earlier approached this Court by filing Anticipatory Bail Application No.1561 of 2021 and on 2nd February 2022, when disinclination was shown by this Court to grant any relief, the applicant had withdrawn the said Application.

3. Heard learned Advocate Ms. Sheetal Salunke for the applicant, learned APP Mr. Phule for respondent No.1 – State and learned Advocate Ms. A.N. Ansari for respondent No.2.

4. The informant is the wife of the present applicant and their marriage was solemnized on 21st May 2019. As against the present applicant, she has alleged that he has subjected her to cruelty by demanding Rs.5,00,000/- for purchasing four wheeler, by raising suspicion over her character, assaulting her on that count, causing forcible abortion, having unnatural sexual intercourse with her.

5. Learned Advocate appearing for the applicant submits that now the charge-sheet is filed and the documents those have been collected would show that it was a voluntary abortion of respondent No.2 – informant. The papers from the said hospital have been seized by the police. If her abortion was voluntary, the offence under Section 313, 312 of the Indian Penal Code will not get attracted. Only to show seriousness in the offence and to see the applicant behind the bar, informant has made allegations attracting Section 377 of the Indian Penal Code. Since the charge-sheet has been filed custody of the applicant is not required and he is ready to abide by the terms of the bail.

6. Per contra, the learned APP as well as learned Advocate appearing for respondent No.2 have strongly opposed the Application and submitted that charge-sheet has been filed in view of the fact that applicant is absconding. Applicant is rather avoiding his arrest and efforts made to arrest him were in vain.

7. It is to be noted that the applicant had withdrawn his earlier Application under Section 438 of the Code of Criminal Procedure, on 2nd April 2022 and it appears that he has not surrendered before the police. The copy of the charge-sheet would show that other accused persons have been granted bail

under Section 438 of the Code of Criminal Procedure and thereafter they were arrested and released on bail. However, as regards the present applicant is concerned, his whereabouts appears to have been searched and he could not be found. This Court had earlier shown its disinclination to grant any relief to the applicant. Independently, it is then required to be seen as to whether now the applicant has made out a case.

8. As regards the contents of the First Information Report which attract provisions of Section 498-A of the Indian Penal Code, the custody of the applicant may not be required. But for the ingredients which are attracting Sections 377, 313, 312 of the Indian Penal Code, the custody would be required. The form of abortion appears to have been seized, which include the consent form, but the fact is required to be noted that the consent does not get restricted to the form only. If the informant was forced to give consent then it cannot amount to voluntary consent. Therefore, mere production of those forms will not be sufficient. It appears that Dr. Sujata Kulkarni, who had conducted the abortion, had given her explanation to Police Inspector along with the documents. According to her, the informant had gone to her hospital and told that she does not want to give birth to the child and therefore, opted for the

abortion of five weeks foetus. The evidence will have to come as to whether the informant was alone at that time or was accompanied by the applicant.

9. The statement of the informant under Section 164 of the Code of Criminal Procedure is consistent and then she says that she has daughter aged about 1 ½ years and when she was to be born, at that time the applicant used to say that it is not his child. She was pregnant second time but she says that she was forced to get aborted the child. Thereafter, there are also statements about unnatural sex made by the applicant. The statements of witnesses who had seen the cruelty to her and also heard the acts of cruelty have been recorded. Therefore, when there appears to be evidence against the applicant and it appears that he is successfully avoiding the arrest, applicant has not made a good ground for grant of Application and the same deserves to be rejected.

10. The Application stands rejected.

[SMT. VIBHA KANKANWADI , J.]