

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

ANTICIPATORY BAIL APPLICATION NO.1393 OF 2021

SYED VIKHARUDDIN S/O ALIODDIN

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

...

Mrs. Afreen R. Shaikh, Advocate for the applicant

Mr. A.M. Phule, APP for the respondent No.1

Mr. Z.A. Syed, Advocate for the respondent No.2

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CORAM : SMT. VIBHA KANKANWADI, J.

RESERVED ON : 09th FEBRUARY, 2022

PRONOUNCED ON : 14th MARCH, 2022

ORDER :

1 The applicant is apprehending his arrest in connection with Crime No.310/2021 dated 28.06.2021 registered with Jinsi Police Station, Tq. & Dist. Aurangabad, for the offence punishable under Section 504, 506 read with Section 34 of the Indian Penal Code, 1860 and under Section 4 of the Muslim Women (Protection of Right of Marriage) Act, 2019.

2 Heard learned Advocate Mrs. Afreen R. Shaikh for the applicant, learned APP Mr. A.M. Phule for the respondent No.1 and learned Advocate

Mr. Z.A. Syed for the respondent No.2. In order to cut short, it can be said that they have argued in support of their respective contentions.

3 Contents of the First Information Report would show that the informant got married to the applicant on 17.12.2004. They have three children. According to the informant, her husband and parents-in-law used to abuse her and assault her on domestic reasons. They had thereafter left her to Aurangabad at her parents house in Motiwala Function Hall, Yunus Colony, Aurangabad. Thereafter, around 8.00 p.m. on 14.02.2021 her uncle had tried to leave her in the matrimonial home, however, her husband and parents-in-law told that they are not in need of the informant and the husband of the informant would perform second marriage. When the relatives of the informant tried to pursue the husband and in-laws, at that time, the husband told in presence of all of them that he has left her and then uttered triple Talaq and told that now she has no concern with the family. Ultimately the informant and her relatives came back.

4 Thus, it is to be noted that whatever incident is stated to have taken place was on 14.02.2021, but the First Information Report has been lodged on 28.06.2021. Therefore, there is apparent delay in lodging the First Information Report. Further, it also appears that there are other cases filed

by the informant including application bearing No.142/2020 under Section 12 of Protection of Women from Domestic Violence Act and application bearing No.57/2020 under Section 125 of the Code of Criminal Procedure. Another fact to be noted is that investigation is over and charge sheet has been filed on 30.09.2021. It is shown that the present applicant has absconded. However, the charge sheet does not show which efforts and how many times were made by the Investigating Officer to arrest the applicant.

5 While making submissions the learned Advocate appearing for the applicant, on instructions, has stated that he never uttered triple Talaq to the informant. Rather he is ready and willing to cohabit with her. He has filed application for restitution of conjugal rights and also for custody of children. Therefore, he is considering the informant still as his wife. Therefore, taking into consideration this position of pendency of matters including the application filed by the husband for restitution of conjugal rights, the custodial interrogation of the applicant is not necessary. It cannot be said that he is absconding and, therefore, his liberty deserves to be protected, by allowing the application. Hence, following order.

ORDER

1 Application stands allowed.

2 In the event of arrest of the applicant viz. **Syed Vikharuddin s/o Alioddin**, in connection with Crime No.310/2021 dated 28.06.2021 registered with Jinsi Police Station, Tq. & Dist. Aurangabad, for the offence punishable under Section 504, 506 read with Section 34 of the Indian Penal Code, 1860 and under Section 4 of the Muslim Women (Protection of Right of Marriage) Act, 2019, he be released on PR. of Rs.25,000/- (Rupees Twenty Five Thousand only).

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

4 The applicant shall remain present before the Trial Court on 22.03.2022.

(Smt. Vibha Kankanwadi, J.)

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