

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.1553 OF 2021

KALPESH BHIMRAO MAHALE
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for applicant : Mr. A. S. Sawant
APP for Respondent-State : Mr. A. M. Phule
Advocate for Assist to APP : Mr. A. B. Girase

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CORAM : SMT.VIBHA KANKANWADI, J.

**Date of Reserving the Order :
11-01-2022**

**Date of Pronouncing the Order :
01-02-2022**

ORDER :

1. Present applicant is apprehending his arrest in connection with Crime No.216 of 2021, registered with Shirpur City Police Station, District Dhule, for the offence punishable under Section 377, 498A, 323, 504, 506 read with 34 of IPC.
2. Heard learned Advocate Mr. A. S. Sawant for applicant, learned APP Mr. A. M. Phule well assisted by learned Advocate Mr. A. B. Girase for respondent-State.
3. It has been vehemently submitted on behalf of the applicant that

the applicant is the husband of the informant victim. Their marriage was performed on 21-01-2021. Applicant is serving at Vijapur, District Mehsana, Gujarat State. He is the Senior Lab Chemist with Gujchem Sir Fectan Limited GIDC Ranasan, however, his native place is Savkheda, Taluka Amalner, District Jalgaon. His parents are residing at Savkheda. The informant is making allegations that after the marriage, she was treated properly and was kept with her in-laws. Thereafter, after some days, she was taken to Vijapur by the applicant. She makes allegation that applicant, in-laws, sister-in-law and husband of sister-in-law used to harass her on the count that they were not honoured in the marriage and proper articles have not been given. They started demanding amount of Rs.3,00,000/- for purchasing a flat at Vijapur. When she expressed her inability to give the money, they used to give her mental harassment. Thereafter, when the applicant was alone at Vijapur, he used to demand the nude photos of the informant. When she used to refuse and tell that fact to her sister-in-law, sister-in-law used to say that if she is feeling shy, then those photographs be sent to her and she would forward it to the applicant. That fact was told by the sister to the applicant, and thereafter, the applicant is stated to have scolded the informant. The informant then states that she could get from

the mobile phone of the applicant that the applicant has illicit relations with a lady. Thereafter, he started drinking liquor, smoking and chewing Gutkha. The applicant used to physically harass the informant under the influence of liquor. It is then stated that since 06-03-2021 the applicant went to his place of service and her father-in-law called her father and sent her to parental house. She stayed with her father for about two months and in the meantime went to matrimonial home twice. Applicant had gone to fetch her on 10-06-2021. At that time also she could see the call recording of her husband on his mobile and could get that he used to talk to a lady frequently. When she asked about the same to the applicant, she was beaten. She then alleges that on 04-07-2021 the applicant had committed unnatural intercourse with her and when she disclosed the said fact to her mother on 05-07-2021, her father and matrimonial uncle went to Vijapur on 07-07-2021, and under the pretext that her mother's health is not good, she was taken back. She had then lodged report with Women's Cell at Dhule and three rounds of meetings were held, but the applicant was not repenting his acts, and therefore, she lodged the report.

4. The learned Advocate for the applicant on the basis of the

contents of the FIR submitted that the allegations are false and concocted in order to give counter blow to the notice that was issued by the applicant to the informant on 14-09-2021 through Advocate from Vijapur, District Mehasana, Gujarat State. Copy of the said notice has been produced at Exhibit 'C'. The family members have been roped by the applicant and as regards the offence under Section 498A, 323, 504, 506 is concerned, the directions of the Hon'ble Apex Court in *Arnesh Kumar vs State Of Bihar reported in 2014 (8) SCC 273* would be applicable, but intentionally Section 377 of the IPC has been invoked in this case so that the informant would see the applicant behind bars. When FIR has been lodged with an ulterior motive, the applicant deserves protection in respect of his personal liberty. The applicant has been granted interim relief by this Court on 21-12-2021 and he has abided by the terms. He is ready to abide by the conditions that would be imposed.

5. Per contra, the learned APP well assisted by learned Advocate Mr. A. B. Girase for the original informant submitted that it is not a case that the informant is making unnecessary allegations. The police papers would show as regards offence under Section 377 of the IPC is concerned that she had taken treatment on 08-07-2021

from Dr. Rohan Gujarathi and the documents, in respect of the same, from said doctor have been collected. Those details have been given by the informant in her supplementary statement recorded on 29-01-2021. Further, the statements of the witnesses recorded would show that time and again immediately after the incidence, the informant has informed her parents as well as near relatives as to what treatment has been given to her. Copy of her application given to Women's Cell S.P.Office, Dhule dated 16-07-2021 contains the same allegations and that was the application which was given prior to the notice that was given by the applicant to the informant. Therefore, it is not a case that some concocted story has been developed by her. Further, as regards the alleged illicit relations of the applicant with two ladies are concerned, there are statements of the two colleagues of the applicant from Vijapur and one is his own cousin. Therefore, there are allegations about mental as well as physical harassment given by the applicant to the informant. The custodial interrogation of the applicant is necessary, so also taking into consideration the allegations, this is not a fit case where the applicant should be released on anticipatory bail. Reliance has been placed on the decision by the Delhi High Court in *Sandeep Singh Kadyan Vs. State of NCT of Delhi (Bail Appln.*

No.189 of 2020 and CrIm.A.1589 of 2020), decided on 24-01-2020, wherein also the wife had made allegations in respect of offence under Section 377 of IPC and the High Court had refused to exercise the powers under Section 438 of CrPC.

6. Before turning to the merits of the case, taking into consideration the allegations that the incidence alleged to have taken place at Vijapur, it was asked as to whether the police at Shirpur City Police Station were competent to take cognizance of the FIR, the learned Advocate for the applicant has relied on the decision in *Shekhar Shivdas Mahire and others Vs. Sou.Sarikabai Shekhar Mahire*, reported in 2010 (4) AIR Bom R 268, and *Ramesh and others Vs. State of T.N.*, reported in (2005) 3 Supreme court Cases 507. The learned Advocate for assist to APP has relied on the decision in *Rupali Devi Vs. State of Uttar Pradesh and others*, reported in (2019) 5 Supreme Court Cases 384 and decision in *Priti Kumari Vs. The State of Bihar and Ors.*, (Criminal Appeal No.1387 of 2019), decided on 13-09-2019 by Hon'ble Apex Court. Taking into consideration these decisions, especially the Hon'ble Apex Court, it can be said that the wife can file complaint alleging commission of offence under Section 498A of the IPC at the place

where she takes shelter after leaving or driven away from matrimonial home on account of acts of cruelty committed by husband and his relatives.

7. Now turning towards the facts of the case, the contents of the FIR are already reproduced, therefore, they are not narrated once again. No doubt as regards the other sections are concerned, the ratio in *Arnesh Kumar (Supra)* would be applicable, however we are more concerned with the allegations for the offence punishable under Section 377 of IPC. The relationship between the informant and the applicant is that of husband and wife. But then without going into the aspect as to whether there should be a concept of marital rape as it can be taken a note of that proceedings are pending before the Delhi High Court in that respect, but we are not concerned with it in this case since offence is registered under Section 377 of IPC, therefore, the relationship becomes immaterial. There are allegations about unnatural intercourse by the applicant on 04-07-2021 and then the informant states that she had informed said fact to her parents on 05-07-2021, and then her father and maternal uncle had gone to Vijapur on 07-07-2021 and brought her back. At this stage, there are documents to support the supplementary

statement though it is taken belatedly to state that she had taken treatment with Dr.Gujarathi on 08-07-2021. Further, there are statements of the witnesses to whom the applicant had immediately disclosed the said fact and this fact could have been disclosed by her only to her relatives, and nobody can expect that it should be disclosed to a third person. Still the doctor from whom she had taken the treatment on 08-07-2021, would be the vital witness in this case. As regards the conduct of the applicant is concerned, *prima facie* it appears that there are statements of his own colleagues as well as the cousin brother stating that they had seen the present applicant along with two different ladies. Whether that relationship was to the extent of extramarital affair, would be the matter of evidence. Therefore, taking into consideration all these aspects, this is not a fit case where the extraordinary powers of this Court should be utilized in favour of the applicant. Though it appears from the date of the FIR that the notice issued by the present applicant was prior in time, yet in the FIR itself stated that she had already filed complaint application with the Women's Cell, Dhule and three rounds of talks had taken place. The copy of the said application made before the Women's Cell would show that it was filed on 16-07-2021. Unfortunately, it appears that within six to

seven months of marriage, all these things have happened. The relationship has gone to that extent. Thorough investigation is therefore necessary, and therefore, the application deserves to be rejected, accordingly it is rejected. The interim relief, granted earlier by this Court, stands vacated.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-