

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.46 OF 2020

Anil Nandlal Gupta

Applicant

versus

The State of Maharashtra

Respondent

Mr.Prashant Darandale, Advocate for applicant.

Mr.Karim Pathan, Advocate for respondent no.2.

Mr.S.V.Gavand, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 24th February 2022

PC :

1. This is an application for anticipatory bail in CR No.341 of 2019 registered with MIDC Police Station, Mumbai for offences under Sections 498A, 406, 34 of Indian Penal Code. The FIR was registered on 24th July 2019.

2. The case of prosecution is that the marriage between the complainant and the applicant was performed on 23rd June 2018. The applicant and his mother has ill-treated the complainant. The family of complainant had spent money for performing marriage and has also parted jewellery. It is alleged that one lady had approached the complainant and informed her that she is in relationship with applicant. There was physical relationship between them. The mother-in-law of the complainant ill-treated her. Both the accused were suspecting her character. The complainant had visited Dubai and joined the applicant. On 10th April 2019 she was assaulted by applicant. On 11th April 2019 the complainant came to India. She

was treated at Cooper Hospital. She was pregnant. She was treated at Uma Maternity Nursing Hospital for cleaning uterus. Subsequently it was alleged that the pregnancy was terminated on account of assault upon her by the applicant.

3. The applicant had preferred application for anticipatory bail before the Court of Sessions. The said application was rejected.

4. The record also indicate that the parties tried to resolve the dispute and consent terms were executed. However, settlement could not be arrived at. Both the parties are blaming each other for non compliance of the consent terms.

5. The complainant has filed two affidavits-in-reply opposing this application for anticipatory bail. The first reply has been filed on 10th March 2020 and subsequently fresh reply is filed on 24th January 2021.

6. Learned advocate for the applicant submitted that the FIR is false. Pursuant to the execution of consent terms, the applicant had parted amount of Rs.5,00,000/- to the complainant. The consent terms could not be fulfilled. The allegations about abortion on account of assault are false. The allegations are afterthought. There has been delay in lodging the FIR. Undisputedly most of the time the applicant was visiting various places on account of his employment. Custodial interrogation of the applicant is not necessary.

7. Learned APP submitted that specific allegations are made against applicant in the FIR. Apart from cruelty, the accused had

misappropriated ornaments of the complainant and thereby committed offence u/s.406 of IPC. The applicant was assaulted. The medical case papers show the nature of injuries sustained by the complainant which fortifies her version that she was assaulted.

8. Learned counsel for complainant submitted that the complainant was subjected to physical and mental cruelty. The accused was suspecting her character. She was assaulted. She had taken treatment at Cooper Hospital. The medical case papers about the treatment has been annexed to the reply. Several complaints were made by the complainant. On account of the assault, the pregnancy was required to be terminated. Offence under Section 313 of IPC is made out. However, said offence was not registered. Complaints were filed by the complainant to Police authorities urging invocation of offence u/s.313 of IPC. The complainant was assaulted at Dubai and she came to India and took treatment at Cooper Hospital. While the complainant was employed and returning home late in the evening after completing her work, the accused were suspecting her character. Chats ensued between the applicant and the complainant and medical case papers are annexed to affidavit-in-reply. The complainant could not lodge complaint at Dubai. The pregnancy was terminated at Uma Maternity Nursing Hospital. There was continuous ill-treatment by accused. There is misappropriation of the jewellery of the complainant. The Sessions Court has rejected the application for anticipatory bail. The applicant did not comply the consent terms. He had avoided to perform consent terms. The applicant was in relationship with another lady prior to marriage and even after the marriage. Hence the application for anticipatory bail may be rejected.

9. Learned APP tendered report of concerned Police Station which indicate that letter dated 2nd February 2022 was submitted by Assistant Police Inspector, MIDC Police Station, Mumbai to Medical Officer, Uma Maternity Nursing Home about termination of pregnancy. The letter submitted by Uma Maternity Nursing Home mentions that the complainant had approached the said nursing home for treatment. She had not made any grievance about assault. No injuries were noticed on her person. After conducting sonography, emergency D & C was performed on 13th May 2019. She was discharged from hospital on 14th May 2019. The consent form filed by the complainant and medical case papers are annexed to the report, which are taken on record.

10. Complaint dated 8th May 2019 was forwarded by the complainant to the police. There were no allegation about miscarriage/termination of pregnancy on account of assault by accused. Another complaint was forwarded on 20th June 2019, which also does not contain such allegations. Undisputedly the offence u/s.313 of IPC has not been registered by police.

11. The marriage between parties was solemnized on 23rd June 2018. From the tenor of the FIR it appears that the applicant was employed and on account of his employment he required to travel. He was at Chennai and Dubai. The complainant had alleged that she was assaulted by accused at Dubai. The incident of assault had allegedly occurred on 10th May 2019. The FIR was registered on 24th July 2019 for the offences under Sections 498A, 406 r/w 34 of Indian Penal Code. The complaint regarding additional offence was

submitted by complainant dated 15th November 2021. It also appears that consent terms were executed between parties but the same were not complied. Amount of Rs.5,00,000/- was parted by applicant to complainant. The grievance of the complainant is that the applicant has failed to comply consent terms. Proceedings under Domestic Violence Act are initiated against applicant. The investigating agency was at liberty to conduct search at the residence of the applicant in view of allegations of misappropriation of ornaments of complainant.

12. Considering the aforesaid circumstances, ustodial interrogation of applicant is not necessary. Hence, I pass following order :

ORDER

- (i) Anticipatory Bail Application is allowed and disposed of;
- (ii) In the event of arrest of applicant in CR No. 341 of 2019 registered with MIDC Police Station, Mumbai, the applicant be released on bail on executing PR bond in the sum of Rs.25,000/- with one or more sureties in the like amount;
- (iii) The applicant shall report the Investigating Officer as and when called for;
- (iv) The applicant shall not leave India without prior permission of this Court till further orders.

(PRAKASH D. NAIK, J.)

MST