

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO.441 OF 2022

1. Anchal Aditya Garg
 2. Aditya Omprakash Garg
 3. Niraj Naveen Dwivedi
- Applicants

versus

State of Maharashtra

.... Respondent

WITH

ANTICIPATORY BAIL APPLICATION NO.444 OF 2022

1. Vimal Agarwal
 2. Alka Vimal Agarwal
- Applicant

versus

State of Maharashtra

.... Respondent

.....

- Mr.Aabad Ponda, Senior Advocate a/w Niranjan Mundargi a/w Sujit Pathak a/w Pranay Dave, Advocate for Applicant in ABA No.441/22.
- Mr.Subodh Desai a/w Mr.Nikhil Mengde a/w Mr.Siddhikesh Ghosalkar, Advocate for Applicant in ABA No.444/22.
- Ms.Sharmila S. Kaushik, APP for the State/Respondent in ABA No.441/22.
- Mr.P H. Gaikwad, APP for the State/Respondent in ABA No.444/22.
- Mr.Kunal Rane i/b. Manjul Rao, Advocate for Original Complainant in both ABAs.

CORAM : SARANG V. KOTWAL, J.
DATE : 18th FEBRUARY, 2022

P.C. :

1. Both these applications are decided by this common order because they arise out of the same registered offence and same investigation. Wherever necessary, the Applicants are referred to by their names.
2. The Applicants are seeking anticipatory bail in connection with C.R.No.421 of 2021, dated 02/07/2021, registered with Matunga Police Station, Mumbai, under sections 498-A, 420, 406, 342, 323, 504, 506, 120(B) r/w 34 of the Indian Penal Code, and under sections 3, 4 of the Dowry Prohibition Act.
3. Heard Mr.Aabad Ponda, Senior Advocate and Mr.Subodh Desai, learned counsel for the Applicants; Ms.Sharmila S. Kaushik and Mr.P. H. Gaikwad, learned APPs for the State; And Mr.Kunal Rane, learned counsel for the original complainant.

4. The FIR is lodged by one Nidhi Agarwal. She was married to Vishal Agarwal.

Following are the Applicants in Anticipatory Application No.441 of 2021;

- (1) Anchal Garg -: Sister of the informant's husband Vishal
- (2) Aditya Garg -: Husband of Anchal
- (3) Niraj Dwivedi -: Employee of Vishal

The Applicants in Anticipatory Bail Application No.444 of 2022 are parents of Vishal i.e. his father Vimal Agarwal - Applicant No.1 and mother Alka Agarwal - Applicant No.2.

5. The FIR is lodged as mentioned earlier by Nidhi. She has stated that she got married with Vishal on 25/04/2021. The marriage talks were going on since November 2020. Vishal's family was from Indore. During the meeting for fixing the marriage, Vishal and Applicant Vimal told the informant's family that the entire expenses for the wedding should be borne by the informant's father. It was accepted. At that time, some

ornaments were exchanged. After the marriage was fixed, the Applicant Vimal told the informant's father that since the marriage is fixed, he should send Rs.10 lakhs in the Applicant Aditya's account. The informant's father did not have that much amount immediately, but he promised to pay the money after he went back to Mumbai. As per the wish of the Applicant Vimal, the informant's father booked Club Mahindra Resort at Udaypur for marriage. On 01/01/2021, Vishal, his family members and the present Applicants came to the house of the informant and on 01/01/2021 the Applicant Vimal demanded Rs.50 lakhs from the informant's father. He also threatened to break the marriage if the money was not paid. The informant immediately paid Rs.20 lakhs on that day. The Applicant Vimal told them that they were not happy with the venue and told the informant's father to book the venue at an expensive hotel at Udaypur. On 24/01/2021, the Applicant Anchal visited the informant's house. There are allegations that as per her demand the informant's parents gave her Rs.10 lakhs in cash. After a few days Vishal told the informant to pay Rs.10 lakhs to the Applicant Aditya. That

amount was also paid in February 2021 to the Applicant Aditya. In April 2021 the informant's father paid Rs.10 lakhs on the demand of the Applicant Vimal. On 25/04/2021 on the day of wedding, Vishal and the Applicants Vimal and Alka showed their unhappiness over the money paid and demanded more jewellery and money. They threatened to break the marriage unless their demands were met. The informant's parents promised to meet their demands and requested them to accept jewellery and clothes worth Rs.1 Crore. Somehow the marriage took place on that day. There are specific allegations in the FIR that the Applicant Vinod demanded payment for the bill for the hotel to the tune of Rs.15 lakhs and Rs.4 lakhs as vendor's payment. Those Rs.19 lakhs were given in cash to the Applicant Vimal and Vishal. Only thereafter the informant went to reside in her matrimonial house at Indore.

6. On 30/04/2021 itself, the husband Vishal and Applicants Vimal and Alka picked up quarrel with the informant and expressed their displeasure over less amounts, articles and

jwellery given to them. After a few days, the informant saw some photographs of Vishal on his I-pad, where she came across some photographs showing that Vishal was earlier engaged to another girl. The informant was kept in dark about it. She questioned Vishal, but he slapped her. On 24/05/2021 the Applicants Vimal and Alka abused the informant and demanded jwellery, cash and a luxury car. She was illtreated and she was locked in a room. On 25/05/2021, the informant complained about this to Vishal, but he ignored her and instead abused her. There are allegations that Vishal's manager Niraj also shouted at her and threw her out of his office. It is alleged that he used to make phone calls and harass her at the instigation of Vishal. The situation became worse and on 26/05/2021 the Applicants Vimal and Alka drove her out of their house. On 27/05/2021 the informant's mother tried to mediate. But nothing further transpired and finally the informant lodged this FIR.

7. Learned Senior Counsel Mr.Ponda submitted that the Applicant Anchal is a married sister of Vishal. She is residing

separately in Mumbai and not in Indore, where allegedly the informant was illtreated. He submitted that even as per the allegations the amount of Rs.10 lakhs was paid to the Applicant Aditya at the instance of Vishal. Though there are allegations of accepting Rs.10 lakhs by Anchal, there are no serious allegations that the informant was forced to pay that amount. More importantly he relied on certain messages sent by the informant herself, whereby she was showing faith in both these Applicants and indicated that she had no grievance against them. He submitted that Niraj is not related to Vishal and therefore he cannot be booked u/s 498-A and other offences of IPC. In any case, the role attributed to him is vague and for that his custodial interrogation is not necessary.

8. Learned counsel Mr.Subodh Desai appearing for the Applicants Vimal and Alka submitted that after marriage, the informant as well as Vishal were tested positive for Covid-19 and they were quarantined in that house. Therefore all these allegation are false. These incidents could not have taken place.

There are bank transaction showing that the amount was paid to the hotel in Udaypur from the bank account of the Applicant Vimal. He submitted that the email exchanged between the informant's father and the Applicant Vimal did not show that there was any grievance from the informant's side. The marriage lasted only for about a month. The main dispute is between the husband and wife and the parents are unnecessarily roped in. Therefore their custodial interrogation in the this background is not necessary. Mr.Desai further submitted that before lodging of the FIR the informant had sent the message to the Applicant Vimal and had apologized about her behaviour. According to Mr.Desai the message shows that their relations were cordial.

9. Both learned APPs produced before me the investigation papers, which contain statements of independent witnesses which support the case of the informant. Learned APP Ms.Kaushik submitted that the fact of receiving Rs.10 lakhs each, is alleged against the Applicant Anchal and Aditya, which cannot be disputed and even they should not be granted anticipatory bail.

10. Learned APP Mr.Gaikwad submitted that the FIR is sufficiently elaborate about the illegal demand and harassment caused to the informant.
11. Learned counsel for the Intervenor supported the stand taken by the learned APP. He submitted that the other main grievance is that the Applicants had suppressed earlier engagement between Vishal and another girl. He submitted that Vishal is facing allegation of sexual assault in the U.S.A. and therefore he was not awarded the degree. This fact was also suppressed from the informant. Therefore this case is more serious and allegations of cheating are also made out.
12. I have considered these submissions. As far as the Applicant Niraj is concerned, he was the manager and there are only vague allegations against him. But even those allegations are made with the averments that he had acted at behest of Vishal. He is not involved in the main allegations. Therefore his

custodial interrogation will not be necessary. He is not related to the informant's husband Vishal.

13. As far as the Applicant Anchal and Aditya are concerned, they are residing in Mumbai separate from the informant and Vishal's matrimonial house at Indore. While it is true that there are allegations that they were paid Rs.10 lakhs each, but Aditya had allegedly accepted that amount as Vishal had directed the informant's parents to pay him. There are allegations of Anchal receiving Rs.10 lakhs, but she being a married sister, staying separately her custodial interrogation would not be necessary.

14. Apart from that, there are other factors in their favour in the nature of Whatsapp messages sent by the informant to both of them. These messages are sent between June 2021 and July 2021 i.e. even after the FIR was lodged. These messages do indicate that the informant was having soft corner for them and was seeking their help. In fact, the messages indicate that she

was telling the Applicant Aditya that she would always have respect for him and wanted to have good relations with them. Even after lodging of the FIR, she was referring to the Applicant Aditya as 'Jiju'. The message sent to the Applicant Anchal also shows that she was sharing her thoughts with her and their relations were not that bad. Considering this, I am inclined to protect the Applicant Anchal, Aditya and Niraj with an order of anticipatory bail.

15. As far as the Applicants Vimal and Alka are concerned, there are serious allegations of demand and acceptance of dowry, made against them in the FIR itself, which clearly falls within the meaning of section 498-A of IPC and u/s 3 and 4 of Dowry Prohibition Act. The messages referred to earlier between the informant and Aditya mention that the informant's parents had given all that they had asked for.

16. As far as the averments in the FIR are concerned, there are various instances where both these Applicants have

demanded and have extracted cash, jewellery and other expenses from the informant's parents. The demands were huge, which were somehow met by the informant's parents. On other important occasions, even on the day of wedding, the demands were made and the informant's parents having been caught in difficult situation, had to fulfill their demands.

17. There are statements of independent witnesses namely Nisarg Dhariya and Mikson D'souza. Both of them had gone to Udaypur. They had witnessed the instances when the demands were made by these Applicants and the pressure was put by them on the informant's parents to meet their demand.

18. Mr.Desai submitted that after the marriage the informant and Vishal were quarantined in their house and the incidents could not have taken place. I am unable to agree with these averments. Even after the period of quarantine was over, the harassment continued and on the very first day after the marriage before quarantine period also there were instances

when the demands were made overall huge amount and jewellery were extracted by the Applicants. The informant was harassed on this count.

19. Apart from that, there are serious allegations of concealment of Vishal's engagement, which had taken place earlier with another girl. This also is a serious act on their part. Apart from that allegations of sexual assault are made against Vishal in U.S.A. This had caused impediment in his obtaining degree. This was also not told to the informant. This also amounts to cheating. All these offences are serious. Therefore it cannot be said that their custodial interrogation will not serve any purpose. These offences have their own importance. With certain intentions they are made non-bailable offences. Therefore in this background I am not inclined to protect the Applicant Vimal and Alka by passing order of anticipatory bail in their favour.

20. Hence, the following order :

ORDER

- (i) The Anticipatory Bail Application No.444 of 2021 preferred by the Applicant Vimal Agarwal and Alka Vimal Agarwal is rejected.
- (ii) The Anticipatory Bail Application No.441 of 2021 is allowed.
- (iii) In the event of their arrest in connection with C.R.No.421 of 2021, dated 02/07/2021, registered with Matunga Police Station, Mumbai the Applicant Anchal Aditya Garg, Aditya Omprakash Garg and Niraj Naveen Dwivedi, are directed to be released on bail on their furnishing PR bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) each, with one or two sureties each, in the like amount.
- (iv) These Applicants shall attend the concerned Police Station as and when called and shall cooperate with the investigation.
- (v) Application stands disposed of accordingly.

21. At this stage learned counsel Mr.Desai sought stay of this order because the Applicants were protected till today by the Sessions Court.

22. I see no reason to grant stay to this order. I have decided this matter, after hearing the parties at length.

(SARANG V. KOTWAL, J.)