

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

ANTICIPATORY BAIL APPLICATION NO. 485 OF 2021

1) Nafisa Israr Ahmad Khan	
2) Shakib Israr Ahmed Khan	 Applicants
v/s.	
The State of Maharashtra	 Respondent

Ms. Paavani Chadha i/b. Mr. Abhijeet S. Singh for the Applicant.
Ms. A.A. Takalkar, APP for the State.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 25th MARCH, 2022.

P. C. :-

. This is an Application under section 438 of Cr.PC. filed by the aforesaid Applicants apprehending their arrest in C.R.No.I-37/2021 registered at Kashmira Police Station for offences punishable under sections 313, 323, 498A, 504, 506 r/w. 34 of the Indian Penal Code.

2. Heard Ms. Paavani Chadha, learned counsel for the Applicants. She submits that the allegations against the Applicants are general in nature. She further states that there is no prima facie material to indicate that the Applicants herein were involved in causing miscarriage of the complainant. She further submits that, on the

contrary, material on record reveals that it was a failed pregnancy. She further submits that the complainant and her family members had come to matrimonial home of the complainant and had taken away all the belongings of the complainant. She states that no prima facie case is made out against the Applicants who are permanent residents of the State. She therefore states that the Applicants are entitled for pre-arrest bail.

3. Ms. A.A. Takalkar, learned APP for the State submits that the material on record prima facie reveals that the complainant was subjected to mental as well as physical cruelty. There are specific allegations against both the Applicants. Moreover, the statement of the complainant clearly indicates that the Applicant No.2 had kicked her on her abdomen which has resulted her miscarriage. She submits that the offence is of serious nature which necessitates custodial interrogation of the Applicants.

4. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

5. The aforestated crime was registered pursuant to the First Information Report (FIR) lodged by Sajia Sakib Ahmed Khan, the wife

of Applicant No.2. The Applicant No.2 and the complainant were married on 22/11/2019. The complainant claims that her parents had given her gold and other household articles. However, immediately after the marriage, the Applicant No.2 and his family members started taunting her. They would comment that the clothes given by her parents were purchased from footpath and insult her in presence of relatives over trivial issues and abuse her parents and her brother. An attempt was made to resolve the dispute amicably but there was no change in their behaviour. The complainant has stated that the test report dated 20/11/2020 indicated that she was pregnant despite which she was compelled to do household chores and take care of a large family. She claims that the Applicant No.1 had kicked on her abdomen resulting in miscarriage. She claims that she left her matrimonial home on 20/01/2021 because of physical and mental cruelty meted out to her by the Applicants and other family members.

6. The records reveal that the allegations of cruelty made against the Applicants and all family members of the Applicant No.2, are general in nature. It is also stated that the other family members have already been released on bail. The only specific allegation against the Applicant No.1 is that on 05/01/2021, she had kicked the complainant

on her abdomen and caused her miscarriage. In this regard, the sonography report dated 02/01/2021 reveals that there was early intrauterine pregnancy which required confirmation by BETA HCG levels. The test report dated 02/01/2021 shows the Sr. BETA HCG levels as 150.10 mIU/ml which indicates that complainant was about 01-02 weeks pregnant. Subsequent report dated 04/01/2021 reveals that levels of Sr. BETA HCG had already dropped to 137.40 mIU/ml, suggesting that it was a non viable intrauterine pregnancy. This was also certified by the Doctor from Sanjivani Hospital that it was a case of failed pregnancy. Hence, there is no prima facie material to indicate that the Applicant No.1 herein had caused miscarriage of the complainant and/or that she is involved in commission of the offence under section 328 of IPC.

7. The Applicants are the permanent residents of the State. There is no possibility of the Applicants absconding and/or thwarting the course of justice. Considering the nature of accusations and the material in support thereof, in my considered view, the Applicants are entitled for pre-arrest bail. Hence, the Anticipatory Bail Application is allowed on following terms and conditions :-

(a) In the event of arrest of the Applicants in C.R.No.I-37/2021 registered at Kashmira Police Station, they shall be released on bail on furnishing bail bonds in the sum of Rs.25,000/- each (Rupees Twenty Five Thousand each) with one or two sureties in the like amount ;

(b) The Applicants shall report to the Investigating Officer as and when required by the Investigating Agency ;

(c) The Applicants shall keep the Investigating Officer informed of their current address and mobile contact numbers, and/or change of residence or mobile details, if any, from time to time.

8. The Application stands disposed of.

**PREETI
H JAYANI**

(SMT. ANUJA PRABHUDESSAI, J.)

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