

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

WRIT PETITION NO. 1169 OF 2022

Abhishesh Binit Srivastava

...Petitioner

Versus

The State of Maharashtra & Anr.

...Respondents

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Mr. Aniket U. Nikam a/w. Mr. Aashish Satpute, Mr. Piyush Toshnival,
Mr. Vivek Arote i/b. Mr. Amit Icham for the Petitioner.
Mr. J.P. Yagnik, APP for the Respondent-State.

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**CORAM : PRASANNA B. VARALE &
S.M. MODAK, JJ.**

DATE : 21ST APRIL, 2022

P.C.:

1. Heard learned counsel appearing for the petitioner and learned APP.
2. A limited grievance is raised by the petitioner in the present petition.
3. The petitioner is accused of an offence bearing C.R. No. 608 of 2021 registered with N.M. Joshi Marg Police Station, Mumbai. It was registered under Sections 376 and 417 of the Indian Penal Code on the complaint of one Ms. Lubna Javed. Initially, she lodged a complaint with Deputy Commissioner of

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Police, South East District, Delhi. As per forwarding letter dated 3rd November, 2021, the complaint has been transferred to the Deputy Commissioner of Police, Mumbai City.

4. Sum and substance of the allegation in FIR is that the petitioner and first informant were knowing each other and petitioner was working as software engineer at Bangalore. They had started interacting with each other on phone and on whatsapp. There was intimacy developed in between them. The first informant gave proposal of marriage. The petitioner sought time to fix his family problems which delayed their marriage. In the meantime, the marriage of first informant with some other boy was fixed on 5th October, 2019. Ultimately, she married with one Rameez Siddiqui on 5th October, 2019.

5. Being annoyed, the petitioner called husband of the first informant and informed to him about their love affair. Due to that, husband of the first informant gave her divorce as per Shariat Law. Thereafter, first informant was pregnant and she claimed that it is due to intercourse with the petitioner.

6. Initially, she lodged complaint and offence came to be

registered with New Delhi Police as referred above. The petitioner successfully got regular bail from the Court of Additional Sessions Judge as per order dated 7th March, 2022. During the pendency of this proceeding, N.M.Joshi Marg Police Station submitted a proposal to Special Executive Magistrate for taking action under Section 107 of the Code of Criminal Procedure (for short, “the Code”). A show cause notice dated 10th March, 2022 is issued to the petitioner.

7. During the pendency of that proceedings, even show cause notice under Section 111 of the Code was issued asking the petitioner to furnish interim bond for one year along with surety for Rs. 50,000/-. These orders are challenged by the petitioner.

8. We have perused the provisions of Section 107 of the Code. Except this offence, the respondent does not claim that there were other offences registered against the petitioner. The provisions of Section 107 of the Code can be resorted to if there is likelihood of breach of peace at the instance of a particular person. We are unable to convince ourselves that the respondents have exercised the provisions of Section 107 of the

Code in a proper manner. Already regular bail has been granted to the petitioner. While granting regular bail, the learned Additional Sessions Judge has imposed conditions on the petitioner. There is also condition imposed to file an application for cancellation of bail, if the conditions are violated.

9. In view of this, we are of the opinion that the interest of the first informant is protected. The respondents are at liberty to move the Sessions Court, if an occasion arises, as observed by learned Additional Sessions Judge but certainly taking recourse to the provisions of Section 107 of the Code is not warranted.

10. It is submitted that even though the petitioner is a resident of Uttar Pradesh but at present as he is working by staying at his brother's house in Bombay, he can be directed to give the same address to N.M.Joshi Marg Police Station.

11. In view of the above, we pass the following order :

ORDER

- (i) Writ petition is allowed;

- (ii) The impugned notice dated 10th March, 2022 issued by respondent No.2 is quashed and set aside;
- (iii) The petitioner is directed to furnish his Mumbai address to N.M.Joshi Marg Police Station within two weeks from today.

(S. M. MODAK, J.)

(PRASANNA B. VARALE, J.)