

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

ANTICIPATORY BAIL APPLICATION NO. 3165 OF 2021

Irfan Imtiyaz Shaikh

.... Applicant

Versus

The State of Maharashtra

.... Respondent

Mr. Imran Sheikh a/w. Ruby Shaikh for Applicant.

Mr. Makarand G. Patil, APP for State/Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 03rd JANUARY, 2022

P.C. :

1. The Applicant is seeking anticipatory bail in connection with C.R.No.561 of 2021 registered at Oshiwara Police Station, Mumbai, on 11/07/2021, under sections 498A, 377, 323, 504 and 506 r/w. 34 of the Indian Penal Code (for short 'IPC').

2. Heard Mr. Imran Sheikh, learned counsel for the applicant and Shri. Makarand Patil, learned APP for the State.

3. The First Information Report (for short 'F.I.R.') is lodged by the Applicant's wife. She has stated that, she got married with the applicant on 29/12/2020. She has stated that, till

her marriage, around Rs.28 lakhs were spent by her parents. The applicant and his family had given her some ornaments as stridhan. After her marriage, she came to know that the applicant had suffered some accident and had to be operated on his leg. It is mentioned in the F.I.R. that, CCTV was installed in their bedroom. The applicant used to force her for unnatural sex. The F.I.R. gives certain instances regarding this allegation. Apart from this allegation, there are allegations against the informant's mother-in-law and sister-in-law. Both these ladies used to demand money from her and used to harass her for that purpose. On this basis the F.I.R. was lodged.

4. Learned counsel for the applicant submitted that, on 21/06/2021 the applicant's mother had lodged an N.C. complaint against the first informant. The informant had not lodged any F.I.R. immediately, but she had done so on 11/07/2021, after there was trouble in the marriage. The informant also initiated proceeding under the Protection of Women from Domestic Violence Act on 12/07/2021. He submitted that there are no allegations falling within the definition of 'cruelty' under section

498A of the IPC, so far as the present applicant is concerned. Only allegation against him is under section 377 of IPC, which is a false allegation. He further submitted that, during the investigation some ornaments and other articles were produced before the police on 10/12/2021. Therefore, applicant's custodial interrogation is not necessary.

5. Learned APP opposed this application. He submitted that the allegations of commission of offence punishable under section 377 of IPC are serious and that may also amount to 'cruelty' within the meaning of section 498A of IPC. He, therefore, opposed the grant of relief in this application. Learned APP produced medical examination report of the first informant before the court.

6. I have considered these submissions. Undoubtedly, allegations of commission of offence under section 377 of IPC against the applicant are serious. Serious instances are mentioned in the F.I.R., however, those instances are strictly in between the informant and the applicant. Those allegations will have to be established during trial when both parties will get an opportunity

to examine their witnesses and cross-examine other side's witnesses. At this stage, it is difficult to make any comment on these allegations, particularly, in the light of the fact that medical papers produced before the court do not record any positive opinion in support of the informant's case. However, at this stage, it is not proper to comment anything further on this aspect.

7. So far as allegations of demand of money and harassment for that purpose is concerned, these allegations are directed against mother in law and sister in law of the first informant. As mentioned earlier, some ornaments and articles are already produced under panchanama.

8. In this view of the matter, custodial interrogation of the applicant is not necessary. He can be protected by an order of anticipatory bail. Of course, he will have to attend the concerned police station and will have to co-operate with the investigation.

9. It is made clear that, all these observations are made only for the purpose of deciding this application. The investigation and trial in future shall not be influenced by any of these observations.

10. Hence, the following order :

ORDER

- (i) In the event of his arrest in connection with C.R.No.561 of 2021 registered at Oshiwara Police Station, Mumbai, the applicant is directed to be released on bail on his furnishing P. R. bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.
- (ii) The Applicant shall attend the concerned Police Station as and when called and shall cooperate with the investigation.
- (iii) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)