

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL APPLICATION (ABA) NO. 821 OF 2021

Swapnil S/o Gopinath Pawar and others

...Versus...

State of Maharashtra, through P.S.O., P.S. Anjangaon, Tq. Anjangaon Surji, Distt. Amravati

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Shri G.M. Kubade, Advocate for applicant
Shri S.D. Sirpurkar, A.P.P. for non-applicant/State

CORAM : SURENDRA P. TAVADE, J.

RESERVED ON : 02/02/2022

PRONOUNCED ON : 08/02/2022

This is an application for pre arrest bail in Crime No. 696/2021, registered with Anjangaon Surji Police Station, District – Amravati Rural, for the offences punishable under Sections 498-A read with Section 34 of the Indian Penal Code and 377 of the Indian Penal Code. The First Information Report is lodged by Arti Swapnil Pawar on 13/10/2021. The applicant No. 1 is husband, applicant Nos. 2 and 3 are parents-in-law and applicant No.4 is brother-in-law of the informant. The marriage of applicant No.1 and informant took place on 13/07/2021. After marriage, the informant cohabited with applicant No.1. It is alleged that the applicant No.1 used to harass and used to cause mental and sexual harassment. He used to demand money from informant as well as her parents. The informant, fed up with the ill-treatment, she returned back to her parental house on 03/08/2021. Applicant No.1

came to receive her. Accordingly, the informant came along with applicant No.1 to matrimonial house on 14/08/2021. It is alleged that on 16/08/2021, the applicant No.1 again started causing sexual harassment of the informant. It is alleged that the other applicants also used to cause ill-treatment to the informant. They used to demand money and gold ornaments from the informant. Ultimately, on 25/08/2021, the applicant No.2 went to Mumbai. She used to call informant and used to abuse her in filthy language on phone. It is alleged that on 30/08/2021, The informant came to her parental house and lodged report against the applicants. Further statement of applicant was recorded by the Investigation Officer, wherein, she alleged that the applicant No.1 used to commit unnatural sex with her, therefore, Section 377 of the Indian Penal Code was added against the applicant No.1.

2. On the basis of the above allegations, it is contended by applicants that after the marriage, the informant used to leave the matrimonial house without any cause on every time. The applicant No.1 used to bring her to matrimonial house. It is contended that the applicant No.1 had issued notice to informant asking her for restitution of conjugal rights. The said notice was received by the informant. Still, she did not join the company of applicant no.1. Therefore, the applicant No.1 has filed petition for restitution of conjugal rights before Family Court, Aurangabad. It is contended that after filing of the petition, the informant lodged false and bogus complaint against the applicant. It is contended that the applicants were

released on interim bail. They attended the Police Station as per the direction of this Court. It is contended that the applicants co-operated with the Investigating Officer. To substantiate the said fact, the applicants have produced on record the acknowledgment of attendance given by the Investigating Officer. It is contended that the Investigation is almost completed. The custodial interrogation of the applicant is not required. Hence, it is prayed that the bail be granted.

3. On the other hand, learned A.P.P. has filed reply, wherein, the facts narrated in the First Information Report are reproduced. It is alleged against the applicant No.1 that he used to do unnatural act namely oral sex. He used to cause sexual harassment of the informant. The applicants used to demand money from the informant. The said demand was not fulfilled by the informant as well as her parents. Therefore, she was ill treated at matrimonial house. It is contended that Section 377 of the Indian Penal Code was subsequently added against the applicant No.1. The custodial interrogation of the applicants are required. Therefore, it is prayed that the application be dismissed.

4. Heard learned Counsel for the applicant and the learned A.P.P.

5. Perused the First Information Report.

6. It is admitted fact that the informant had lodged report on 01/09/2021 but the Police Officer had referred the

applicant No.1 and the informant for mediation, wherein, the informant refused to resume the marital ties with the applicant No.1. It is also admitted fact that on 04/10/2021, applicant No.1 filed petition for restitution of conjugal rights before the Family Court, Aurangabad. Thereafter, within a week present First Information Report came to be lodged. It is pertinent to mention here that the informant lodged two reports against the applicant on 01/09/2021 and 13/10/2021. But in both these reports, the facts of unnatural sexual act of applicant No.1 are missing. After registration of crime her statement was recorded wherein, she alleged against the applicant No.1 that he used to do unnatural sex with her. As already observed, said fact is missing from the first two reports. That shows the conduct of the informant. It appears that there was matrimonial discord between the applicant No.1 and the informant. It appears that some efforts were made to settle the dispute. But the mediation was failed and ultimately the First Information Report came to be lodged. Looking to the nature of allegations, the custodial interrogation of the applicant is not required. Nothing is to be recovered at the instance of applicants. During the pendency of this application, the applicants were released on interim bail with a direction to attend Police Station on every Sunday. The applicants have produced on record the copies of acknowledgment issued by the Investigating Officer, which shows that the applicants attended Police Station as per the directions. Similarly, the Investigating Officer had called applicants for spot panchanama. Accordingly, applicant No.1

co-operated with Investigating Officer and panchanama of the scene of the offence was prepared.

7. In view of the above fact, it is my considered view that the custodial interrogation of the applicants is not required. Hence, the applicants are entitled for relief claimed in the application. Hence, I pass the following order.

(i) The application is allowed.

(ii) In the event of arrest all the applicant No.1 - Swapnil S/o Gopinath Pawar, applicant No.2 - Ujwala W/o Gopinath Pawar, applicant No.3 - Gopinath Rajaram Pawar and applicant No.4 - Sumeet Gopinath Pawar, in Crime No.696/2021, are ordered to be released on bail on their executing PR. Bond of Rs. 25,000/- each with one surety each in the like amount.

(iii) All the applicants are directed to attend the Police Station as and when called by the Investigating Officer.

(iv) The applicants are directed not to tamper or induce with the prosecution witnesses directly or indirectly in any manner whatsoever.

(SURENDRA P. TAVADE, J.)

Jayashree..