

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

ANTICIPATORY BAIL APPLICATION NO. 61 OF 2023

SUSHILKUMAR SUDHAKAR MAKASARE
VERSUS
THE SUPERINTENDENT OF POLICE, AHMEDNAGAR
AND ANOTHER

...
Advocate for Applicant : Mr. Hiwale Ganesh Muralidhar
and Mr. Sandanshiv M.B.
APP for Respondents : Mr. G.O. Wattamwar

CORAM : R.M. JOSHI, J.
DATE : 15th June, 2023

PER COURT :

1. Applicant apprehends arrest in connection with Crime No. 1021 of 2022, registered with Newasa Police Station, Taluka Newasa, District Ahmednagar, for the offences punishable under Section 326, 323, 498-A, 504, 506 read with 34 of IPC.

2. Informant is wife of the applicant. It is stated that her marriage was performed on 21st May, 2014. After about a period of a year, there started dispute between the husband and wife. It is alleged that husband and in-laws used to cause harassment to her and used to demand Rs. 5 Lakhs for purchase of four wheeler. The incident occurred on 06th September, 2022, is mentioned in the FIR, wherein, the informant was abused and assaulted by applicant. It is alleged that with wooden log she was assaulted on the ribs. It is further stated that on 04th October,

2022, she made complaint to Bharosa Cell at Ahmednagar against applicant and in-laws. It is claimed that the hearing before the Cell placed on 11th October, 2022, 22nd October, 2022 and 10th November, 2022. Thereafter, she started getting more pain to her ribs and, therefore, she was brought Vighnharta Multi Speciality Hospital, Newasa. X-ray was taken and she was informed that she sustained fracture to the ribs. On the basis of these, offence is registered against applicant and in-laws of the informant.

3. Learned counsel for the applicant states that except the applicant other in-laws are granted anticipatory bail. It is submitted that the First Information Report is filed after about two months of the occurrence of the alleged incident. It is submitted that before the Bharosa Cell, the informant has refused to co-habit with the applicant when the applicant was ready to resume the matrimonial co-habitation. It is, therefore, submitted that the possibility of false report filed as against the applicant cannot be ruled out.

4. Learned APP opposed the said contention by submitting that the informant was in pain for more than a month on account of the incident of assault caused on her on 04th October, 2022. To support his contention, he placed reliance on

certificate dated 16th December, 2022, issued by Vighnharta Multi Speciality Hospital. Thus according to him, in view of the pain caused to the informant for the period of more than twenty days, the offence punishable under Section 326 of IPC, gets attracted in the present case.

5. *Prima facie*, perusal of the record indicates that there are disputes between the informant - wife and applicant - husband though the incident in question has occurred on 06th September, 2022, and on the same day, she went to her parental home, no immediate complaint was lodged to the police about the incident and the present FIR came to be lodged on 15th November, 2022. Though there is allegation that the applicant herein had assaulted her on the ribs with the help of a wooden log, *prima facie*, there is no evidence to show that any grievous hurt was caused to the informant. Admittedly, no fracture is caused to the ribs of the informant as indicated in the certificate dated 16th October, 2022. Furthermore, it cannot be accepted that the informant had suffered during the period of twenty days severe bodily pain or was unable to follow her ordinary pursue. These observations are inevitable in view of the contents of the FIR which show that she lodged a complaint with Bharosa Cell at Ahmednagar, on 04th October, 2022, against applicant and her in-

laws. She also attended the proceedings on three days i.e. 11th October, 2022, 22nd October, 2022 and 10th November, 2022. If she would have been under severe pain and was not able to follow her ordinary pursue, it was practically impossible for her to remain present for the hearing of the said proceeding. The record further indicates that before Bharosa Cell, applicant has shown his willingness to continue co-habitation with the wife, however, informant - wife has refused to stay with the applicant. Pertinently, present report is lodged after the proceeding before the Bharosa Cell was over. In such circumstances, this Court finds substance in the contention of the learned counsel for the applicant as it could be a case of false implication.

6. Since, *prima facie*, there is no material evidence on record to show involvement of the applicant in the offence punishable under Section 326 of IPC, and having regard to the disputes between the informant and applicant, It is fit case, where the liberty to the applicant deserves to be protected. Applicant stand allowed in terms of interim order.

[R.M. JOSHI, J.]

SPChauhan