

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPLICATION (ABA) NO.237 OF 2023

(Shri Adesh s/o Maroti Patil Vs. State of Maharashtra)

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

Court's or Judge's Order

Shri A.I. Nayak, Advocate for the applicant.
Shri S.M. Ghodeswar, APP for State.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- JULY 24, 2023.

Heard.

2. Present application is filed for grant of anticipatory bail in the event of arrest of the applicant in connection with Crime No.310/2022 registered at police station Yashodhara Nagar, Nagpur City for the offence punishable under Sections 323, 324, 354-A, 354-C, 498-A, 504, 506, 509, 489-A read with Section 34 of the Indian Penal Code.

3. The accusation against the present applicant is on the basis of report lodged by Rachana Adesh Patil who is the wife of the applicant. It is alleged that her marriage was performed with the present applicant and now she is residing at her parents house. The applicant has not returned her 'Stridhan' as well as the articles which are gifted to her in the marriage. On the basis of said report, police have registered the crime against the present applicant.

4. As per the contention of the applicant that the applicant has not committed any offence punishable under Section 489-A of the IPC. Section 489-A of the IPC is mistakenly mentioned by the police authorities. As far as the contention regarding the articles is concerned, no such articles are lying with the present applicant. Only to harass the present applicant, this baseless allegations are levelled against the present applicant. His custodial interrogation is not required. As far as the interrogation is concerned he is ready to abide all the conditions. He has already obeyed the directions of this Court when this Court has released him by granting interim protection in his favour.

5. Said application is strongly opposed by the State on the ground that the custodial interrogation of the present applicant is required. During the course of investigation, the Investigating Officer has recorded the spot-panchnama and also the statements of the witnesses. The applicant alleged to have taken the informant to Psychologist and used to administer medicines prescribed by said Psychologist. The informant has refused to consume said medicines, and thereafter she was assaulted by the present applicant. Thus, the allegations are of serious nature. Therefore, the custodial interrogation of the present applicant is required.

6. Thus, from the recitals of the FIR it reveals that the dispute arose out of matrimonial relationship. While granting interim protection, this Court has already referred the Apex Court directions which are given in the case of *Satender Kumar Antil Vs. Central Bureau of Investigation and anr. [(2022) 10 SCC 51]* and *Arnesh Kumar Vs State of Bihar [2014 (8) SCC 273]*. This Court has also referred the Standing Order No.3 of 2022 dated 20/07/2022 issued by the Director General of Police, Mumbai.

7. In *Arnesh Kumar's* case, the Supreme Court, while considering the offences punishable up to 7 years, has held that the compliance of Section 41 of the Code of Criminal Procedure is mandatory and opined that if provisions of Section 41 of the Code is complied, then number of cases which come to the Court for grant of anticipatory bail will substantially reduce. The Apex Court has held that the Police Officer, before arresting, must put a question to himself; why arrest? Is it really required? What purpose it will serve? What object it will achieve? It is only after these questions are addressed and one or the other conditions of Section 41 of the Code is satisfied, power of arrest should be exercised. The Court then directed the State Government to provide to all the Police Officers a check list containing specified sub-clauses under Section 41(1)(b)(ii). The Police Officers are required to forward the check list duly filled and furnish the reasons and material which necessitated the arrest while

forwarding/producing the accused before the Magistrate for further detention.

8. Thus, in view of the judgment of the Hon'ble Apex Court the elements of 'reasons to believe' and 'satisfaction qua an arrest' are mandated and accordingly are to be recorded by the Police Officer.

9. In view of the observation of the Hon'ble Apex Court, this Court has protected the present applicant by granting ad-interim protection. There is no complaint that the applicant has not cooperated with the Investigating Agency. Nothing is placed on record by the State to show that the Investigating Officer has satisfied himself whether arrest is required by assigning any reasons.

10. Considering that the applicant is already cooperated with the Investigating Agency and the Investigating Officer has not placed on record any material to show that he has satisfied himself that the arrest of the present applicant is required or not required. In view of that, the interim protection granted to the present applicant deserves to be confirmed by imposing certain conditions. Hence, I proceed to pass the following order :

(i) The interim protection granted to the present applicant is hereby confirmed.

(ii) In the event of arrest, the applicant - Shri Adesh s/o Maroti Patil in connection with

Crime No.310/2022 registered at police station Yashodhara Nagar, Nagpur City for the offence punishable under Sections 323, 324, 354-A, 354-C, 498-A, 504, 506, 509, 489-A read with Section 34 of the Indian Penal Code, be released on anticipatory bail on executing P.R. Bond in the sum of 25,000/- (Rs. Twenty five thousand) with one solvent surety in the like amount.

(iii) The applicant shall attend the concerned police station as and when required for the investigation purpose.

(iv) The applicants shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case and shall not tamper the prosecution evidence.

11. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)

**Divya*