



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

CRIMINAL WRIT PETITION NO.416 OF 2023

PETITIONER : Hajra Bano wd/o Abdul Gaffar
Shaikh Nazir,
Age: 71 years, Occ: Household,
R/o. C/o. Sajid Khan Pathan,
Bicchutekdi, Camp, Amravati, Tq.
& Dist: Amravati.

..VERSUS..

RESPONDENTS : 1 The State of Maharashtra, Through
P.S.O. Police Station, Frezarpura,
Amravati, Dist: Amravati

2 Farheen Kausar d/o. Fahimuddin
Kazi,
Age: 30 yrs, Occ: Business, R/o.
Pirbayzid Sawmill, Ahead of Ayema
Colony, Tq: Ashti, Dist: Wardha.

Mr Saurabh Singha, Advocate for Petitioner.
Mr S. S. Doifode, APP for Respondent No.1/State.

CORAM : VINAY JOSHI AND VALMIKI SA MENEZES, JJ.
DATE : 19th AUGUST, 2023.

ORAL JUDGMENT : (PER : VINAY JOSHI, J.)

. Heard finally by the consent of Mr Singha,
learned Counsel for petitioner and Mr Doifode, learned
APP for respondent No.1/State.

2. We do not find it necessary to hear the respondent No.2 (informant), in view of the order passed by this Court on 17.08.2021.

3. The petitioner is arraigned as respondent in the proceedings filed by respondent No.2 (wife) under the provisions of Domestic Violence Act, 2005. In said proceedings, the petitioner has filed an application, in terms of Section 340 of the Code of Criminal Procedure, 1973, seeking action for the offences committed by informant falling under Chapter XI of the Indian Penal Code, 1860 (hereinafter referred to as “IPC”). It is petitioner’s contention that the respondent (wife) has similarly filed police report for commission of offence punishable under Section 498A of the IPC. In said report, the petitioner was shown as an accused in the capacity of relative of husband.

4. The petitioner’s learned Counsel invited our attention to an order dated 17.08.2021 passed by this

Court in *Criminal Application (APL) No.220 of 2021 (Mubeen Ahmed Gaffar Khan and Anr v. The State of Maharashtra and Anr.)*, wherein this Court has quashed the proceedings to the extent of petitioners by recording a finding that the petitioners are not related to the informant. On that basis, it is petitioner's contention that despite knowledge of said order, the informant has again made her as a party to DV Proceedings stating to be relative.

5. The observations made by this Court in *Criminal Application (APL) No.220 of 2021*, are on *prima facie* basis to the extent of dealing application under Section 482 of the Code of Criminal Procedure that too in context with the term "relatives of husband" used under Section 498A of the IPC. The matter requires evidence to decide whether petitioner can be termed as 'respondent' within the meaning of Section 2 (q) of the D. V. Act. Therefore, we do not find any propriety in directing the Trial Court to decide said application in the midway i.e. before recording

of evidence.

6. In view of the above, the Trial Court is directed to decide petitioner's application (O.M.C. Application No.79/2021) at the time of final disposal of DV petition.

7. The criminal writ petition stands disposed in above terms.

(VALMIKI SA MENEZES, J.) (VINAY JOSHI, J.)