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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.1726 OF 2023

Zaid Nazir Shaikh

APPLICANT

VERSUS

The State of Maharashtra and Others

RESPONDENTS

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Mr. P. P. Giri a/w Ms. Sushmita Daund, Advocates for applicant

Mr. S. D. Ghayal, APP for respondent - State

Mr. Gaurav L. Deshpande, Advocate for informant (assist to PP)

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 25th JANUARY, 2024

ORDER :

1. Leave to add Superintendent of Police as party respondent.

Amendment to be carried out forthwith.

2. Applicant apprehends arrest in Crime No.305 of 2023 registered with Satara Police Station, Aurangabad for offence punishable section 306, 498-A, 323, 504 of the Indian Penal Code.

3. FIR is lodged by Alamgir Gulam Rasool Shaikh, father of deceased Ayesha and father in law of applicant, alleging that his daughter Ayesha, got married with applicant on 26th July, 2020. After marriage, only for one month she was treated well and,

thereafter she was being ill-treated on the ground that proper dowry was not given, articles given in the marriage were of substandard quality and gold necklace was not given. There was insistence on the part of applicant that Ayesha should bring rent amount of their house from her parents. Ayesha delivered a child at her maternal home. Thereafter, with the mediation of respected persons of their community, Ayesha was sent back for co-habitation in the month of March, 2022. On 15th April, 2022, Ayesha was driven out of the house along with her son, by suspecting her character. Then she started residing with the informant. Ten days prior to the incident, Ayesha and his son Sohail saw status of applicant on his cell phone, "*Alhamdulillah I got married*" and on second status, there was a photograph of a girl. After seeing the said status, Ayesha went into depression. On 26th September, 2023, Ayesha committed suicide by hanging herself. He, therefore, alleged that applicant has abetted her suicide and gave ill-treatment to Ayesha during her lifetime. Therefore FIR is lodged.

4. Heard learned advocate for applicant, learned APP for State and learned advocate for informant. Perused the papers of investigation.

5. According to applicant, he had given divorce to Ayesha as

per customary rights of Mohamedan law and thereafter performed marriage, which is permissible as per Muslim Personal Law. It is submitted that applicant is innocent and he has not committed any offence.

6. Learned advocate for informant vehemently opposed the application stating that for the sake of argument even if it is accepted that ingredients of section 306 of the Indian Penal Code are not made out, however, ingredients of cruelty, contemplated under section 498A of the Indian Penal Code are clearly made out from the allegations made in the FIR and, therefore, applicant does not deserve discretionary relief of anticipatory bail.

7. Learned APP also opposed the application, on the same lines.

8. It *prima facie* appears that merely updating status on whatsapp about performance of marriage does not amount to instigation to Ayesha to commit suicide. Ingredients of section 107 of the Indian Penal Code are absent in the present matter. There is no merit in the submissions of learned advocate for informant that ingredients of cruelty are made out in the present case since *prima facie*, the same are absent.

9. Investigation in the present case appears to be on the verge of completion and custodial detention of applicant is not necessary in the facts of the present case. In the result, application is allowed in terms of the interim protection granted on 17th October, 2023. Till filing of charge sheet, applicant to attend the concerned police station as and when called by the Investigating Officer. Applicant shall not tamper prosecution evidence.

[NITIN B. SURYAWANSHI]
JUDGE