

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO. 3577 OF 2022

SANTOSH
SUBHASH
KULKARNI

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Hiren Kalidas Mewada ...Applicant
Versus
The State of Maharashtra ...Respondent

Mr. Chetan Rathod, i/b D. D. Rananaware, for the Applicant.
Mr. S. R. Aagarkar, APP for the State/Respondent.
Mr. Shantanu Phanse, through VC, a/w Nilesh Navale, for
Respondent No.2.
PSI Sandeep Yesane, Dahisar Police Station, present.

CORAM: N. J. JAMADAR, J.
DATED: 27th FEBRUARY, 2024

ORDER:-

1. This is an application for pre-arrest bail in connection with CR No.569 of 2022, registered with Dahisar Police Station, Mumbai, for the offences punishable under Sections 498-A, 406, 323, 504 and 506 read with Section 34 of the Indian Penal Code, 1860 ("the Penal Code").

2. The first informant had obtained divorce by mutual consent from her quondam husband. Thereafter, the marriage of the first informant was solemnized with the applicant on 11th July, 2016. They were blessed with a daughter on 23rd April, 2017.

3. The first informant lodged a report with the allegations that at the time of marriage the parents of the first informant had presented gold ornaments and valuables. Immediately after marriage, the mother-in-law of the first informant took all those ornaments, which constituted Stridhan. The applicant allegedly subjected the first informant to harassment in myriad ways. The applicant made unlawful demand of money to the first informant as well as her father. When the demand was not met, the applicant and his father defamed the first informant in their community.

4. The first informant alleged various acts of harassment and ill-treatment, physical as well as mental, over a period of time. The applicant had allegedly defrauded the first informant. Financial transactions in the name of the first informant were carried out by the applicant. Loans were raised but not repaid. A property which was purchased by the applicant and the first informant jointly, was agreed to be sold under a MoU to one Rahul Mali, for a consideration of Rs.73,00,000/- without any intimation to the first informant. She was coerced to execute the MoU. She was forced to accept a cheque drawn for Rs.6,00,000/- by the purchaser.

Thereafter, the applicant made himself scarce. Eventually, the first informant lodged the report on 4th April, 2022.

5. Heard the learned Counsel for the applicant and the learned APP for the State. Perused the material on record.

6. When the application was listed before the Court on 23rd December, 2022, a learned Single Judge of this Court was directed that no coercive steps be taken against the applicant. Since then, the applicant is on interim protection. Efforts were made to persuade the parties to explore an amicable resolution of dispute. However, those efforts did not materialize.

7. The learned Counsel for the applicant submitted that before lodging of the instant FIR the applicant had instituted a petition for divorce. The first informant has thus lodged the FIR as a counterblast to matrimonial proceedings instituted by the applicant. Omnibus allegations have been made to rope in the application and his relatives. In the backdrop of the nature of the accusation, according to the learned Counsel for the applicant, custodial interrogation of the applicant is not at all warranted. As the applicant is on interim protection since December, 2022, the applicant deserves to be granted pre-arrest bail.

8. The learned APP fairly submitted that the investigation has reached an advanced stage and charge-sheet is likely to be filed. At this stage, the investigating officer does not require custodial interrogation of the applicant.

9. Mr. Phanse, the learned Counsel for respondent No.2 – first informant, submitted that apart from the cruelty, there are allegations of defrauding the first informant and, therefore, the custodial interrogation of the applicant is warranted.

10. I have carefully perused the allegations in the FIR and the material on record. *Prima facie* it appears that the genesis of the offences is in the marital discord between the applicant and the first informant.

11. As is evident, the things came to such a pass that the applicant instituted a petition for dissolution of marriage. In fact, in the FIR itself, the first informant has adverted to the proceedings, which were instituted by the first informant against the applicant as well as the notices exchanged by and between the parties.

12. *Prima facie* it appears that the first informant returned to Mumbai in the month of May, 2021 and, thereafter, lodged

a complaint of domestic violence before the jurisdictional Magistrate. The first informant has also instituted a civil proceeding at Mirzapur Court, Ahamadabad. The applicant filed a petition for dissolution of the marriage.

13. In this backdrop, the aspect of the time which elapsed from the date, the first informant left her matrimonial home till the lodging of FIR in the month of April, 2022, deserves to be taken into account.

14. In the backdrop of the aforesaid matrimonial discord and a number of proceedings between the parties, at this stage, the custodial interrogation of the applicant does not seem to be warranted for an effective investigation. As noted above, the investigation has reached an advanced stage and charge-sheet is likely to be filed. Whether the intent of the applicant in executing the MoU to sell the house was dishonest since inception would be a matter for adjudication at the trial. None of the offences for which the applicant has been arraigned entails punishment of more than seven years of imprisonment.

15. I am, therefore, impelled to hold that the application deserves to be allowed.

16. Hence the following order:

: O R D E R :

- (i) In the event of arrest of the applicant in CR No.569 of 2022, registered with Dahisar Police Station, Mumbai, the applicant be released on bail on furnishing a PR Bond in the sum of Rs.30,000/- with one or two sureties in the like amount.
- (ii) The applicant shall cooperate with the investigation and attend the Investigating Officer as and when directed.
- (iii) The applicant shall not tamper with the prosecution evidence and/or give threat or inducement to the first informant or any of the persons acquainted with the facts of the case.
- (iv) The applicant shall regularly attend the proceedings before the jurisdictional Court.
- (v) It is clarified that these *prima facie* observations are confined to determine entitlement to pre-arrest bail only.

Application stands disposed.

[N. J. JAMADAR, J.]