

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

ANTICIPATORY BAIL APPLICATION NO.190 OF 2024

Ahmed Mohammed ParmarApplicant
Versus
State of Maharashtra & Ors. Respondents

Mr. R.U. Singh, Advocate i/b. Priyanka Prajapati, for the Applicant.
Ms. Mahalakshmi Ganapathy, APP for the Respondent-State.
Mrs. Hina Yusuf Gogda, Respondent No.3 in person present.

CORAM : SARANG V. KOTWAL, J.

DATE : 23rd JANUARY, 2024

PC. :

1. The Applicant is seeking anticipatory bail in connection with C.R.No.775/2023 registered with Borivali Police Station, Mumbai on 11.12.2023 under Sections 509 and 506 of IPC and under Section 4 of the Muslim Women (Protection of Rights on Marriage) Act, 2019 (for short, 'said Act').

2. Heard Mr. R.U. Singh, learned counsel for the Applicant and Ms. Mahalakshmi Ganapathy, learned APP for the Respondent-State.

3. The FIR is lodged by the Respondent No.3, who is the wife of the Applicant. She has stated that she got married

with the Applicant on 11.5.2014. After some time, she was ill-treated by the Applicant and his relatives. Therefore, she had lodged an FIR vide C.R. No.791/2022 at Kashmiri Police Station under Sections 498-A, 323, 406, 504, 506 read with 34 of IPC. The couple has a son, aged 7 years, and he is in the custody of the Applicant. The Respondent No.3 lodged the proceedings in the Metropolitan Magistrate's Court at Borivali in March, 2023 under the provisions of the Protection of Women from Domestic Violence Act. On 5.10.2023, the informant was present in the Court. On the same date, the Applicant, his mother and their son were seen in the Court. The Respondent No.3 went to meet her son but the Applicant prevented her and abused her. He uttered the word 'talaq' three times and then went away. On this basis, the FIR is lodged.

4. Learned counsel for the Applicant submitted that the alleged incident has taken place on 5.10.2023 and the FIR is lodged on 11.12.2023. There is no explanation for this delay. He submitted that the Applicant has been defending himself before the Magistrate's Court, and, therefore, he would have resorted to have take legal recourse if he wanted to obtain

divorce from his wife. He further submitted that the Respondent No.3 had left their one year child with the Applicant and since then he is raising their son. He submitted that the FIR is filed with malafide intentions to pressurize the Applicant.

5. Learned APP submitted that since the FIR was lodged belatedly the CCTV footage of the area is not available. She further submitted that the investigating agency did not find any witness who could have corroborated the informant's version. Learned APP invited my attention to Section 7(c) of the said Act. Under that provision even for granting bail it was necessary to hear the first informant. She submitted that, therefore, for consideration of anticipatory bail also the informant needs to be heard.

6. Considering these submissions, it is necessary to hear the Respondent No.3. She is already a party in this application. Therefore, I am inclined to issue notice to the Respondent No.3. In the meantime, the Applicant can be protected by way of ad-interim relief. The Respondent No.3 is present in person in the Court. She submitted, through learned

APP, that she had engaged an Advocate but he is not present in the Court today. She is seeking an adjournment.

7. Hence, the following order:

ORDER

- (i) Issue notice to the Respondent No.3, returnable on 28.2.2024. The Respondent No.3 is present in the Court. Therefore, she waives service of notice. Learned counsel for the Applicant shall serve a copy of this application on the Respondent No.3.
- (ii) In the event of his arrest in connection with C.R.No.775/2023 registered with Borivali Police Station, Mumbai, till the next date, the Applicant be released on bail on his executing a P.R. bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.
- (iii) This order shall operate till 28.2.2024.
- (iv) The Applicant shall cooperate with the investigation.
- (v) Stand over to 28.2.2024.

(SARANG V. KOTWAL, J.)