

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.1859 OF 2024

Almin Ayyub Pathan ... Applicant
Vs.
State of Maharashtra and another ... Respondents

Mr. Abdul Wahab Shaikh a/w. Mr. Vahid Shaikh, SMM Owais Jahagirdar for Applicant.

Mr. Tanveer Khan, APP for Respondent-State.

Mr. Adhik Kadam i/b. Mr. Ranjit Jadhav for First Informant.

CORAM : MANISH PITALE, J.
DATE : JULY 30, 2024

P.C. :

1. Heard Mr. Shaikh, learned counsel for the applicant and Mr. Khan, learned APP for the respondent-State.

2. The applicant is apprehending arrest in connection with FIR No.0094 of 2024 dated 15.04.2024 registered with Pimpalgaon Police Station, District - Nashik Rural, for offences under Sections 3 and 4 of the Muslim Women (Protection of Rights on Marriage) Act, 2019.

3. The informant, who is the wife of the applicant has alleged that on 14.04.2024, the applicant stated thrice that he was giving *Talaq* to the informant and that this constitutes an offence under the provisions of the aforesaid Act. It appears that subsequently, Section 498-A of the Indian Penal Code, 1860 (IPC) has also been added in the said FIR.

4. The other accused persons, being relatives of the applicant, have been granted anticipatory bail by the Sessions Court, but the prayer made on his behalf has been rejected.

5. The learned counsel for the applicant submits that there is a

background to the registration of the subject FIR. It is brought to the notice of this Court that after the applicant and the informant were married in the year 2018, due to matrimonial discord, the informant left the matrimonial home and the applicant was constrained to initiate the proceeding for restitution of conjugal rights. The informant initiated proceedings under the provisions of the Protection of Women from Domestic Violence Act, 2005 and also caused an FIR to be registered against the applicant and other accused persons for offences under Sections 498-A, 406, 323, 504 and 506 of the IPC.

6. It is brought to the notice of this Court that the disputes were subsequently settled as a consequence of which, the informant did not support the prosecution in the aforementioned criminal proceeding, which led to the acquittal of the applicant and the other accused persons. The informant returned to the matrimonial house and therefore, the applicant withdrew the proceeding for restitution of conjugal rights.

7. Thereafter again on frivolous issues, matrimonial discord reappeared between the applicant and the informant and in this backdrop, the subject FIR has been registered, which is based on false claims made by the informant.

8. The learned APP, at the outset, invited attention of this Court to Section 7 of the aforesaid Act, which specifies that the offences under the said Act are cognizable, compoundable and that a person accused of the offence under the said Act can be released on bail only after hearing the married Muslim woman, upon whom *Talaq* has been pronounced. It is further brought to the notice of this Court that the informant was indeed heard by the Sessions Court in the present case.

9. This Court is of the opinion that although Section 7(c) of the said Act specifies that no person accused of an offence punishable under the

Act shall be released on bail unless “the magistrate” hears the married Muslim woman upon whom the *Talaq* is pronounced, it would be appropriate that before finally hearing and disposing of the present anticipatory bail application filed by the applicant, the informant is arrayed as a party and heard by this Court.

10. At this stage, Mr. Kadam submits that he has instructions to appear on behalf of the informant. Accordingly, the applicant shall forthwith amend the application and add the informant as respondent No.2.

11. Issue notice to the respondent No.2. Mr. Kadam waives notice on behalf of the respondent No.2.

12. This Court is of the opinion that in view of the background facts brought to the notice of this Court in detail on behalf of the applicant, a case for granting interim relief is made out. In the present case, although a specific allegation is made by the informant that on 14.04.2024, the applicant thrice uttered the word *Talaq*, thereby committing an offence under the provisions of the said Act, the background of the matrimonial discord between the parties cannot be ignored by this Court. In the earlier instance, despite having initiated criminal proceedings against the applicant and others under Section 498-A and other provisions of the IPC, the informant did not support the prosecution, resulting in the acquittal of the applicant and others. She returned to the matrimonial house, as a result of which, the applicant withdrew the proceeding for restitution of conjugal rights. It is after the informant returned to the matrimonial house that the alleged incident has occurred.

13. This Court is of the opinion that in the light of the aforesaid background facts, interim relief deserves to be granted.

14. In view of the above, the following interim order is passed:-
- A. Till the next date, in the event the applicant is arrested in connection with FIR No.0094 of 2024 dated 15.04.2024 registered with Pimpalgaon Police Station, District - Nashik Rural, he shall be released on bail on furnishing PR Bond of Rs.15,000/- [Rupees Fifteen Thousand only] with one or two sureties in the like amount;
 - B. The applicant shall co-operate with the investigation and shall appear before the investigating officer as and when required by the investigating officer;
 - C. The applicant shall not influence the informant, witness or any person concerned with the case and he shall not tamper with the evidence.
15. Needless to say, violation of any of the aforesaid conditions may result in this order being recalled.
16. List the application for further consideration on 26.08.2024, H.O.B.

(MANISH PITALE, J.)