



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (ABA) NO. 621 OF 2024

Priyesh Jagdish Jaiswal and another
Vs.

State of Maharashtra, Through Police Station Officer, Police Station,
Awdhutwadi, Yavatmal

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. M. N. Ali, Counsel for the applicant.
Mr. S. A. Ashirgade, APP for non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 20/09/2024

1. Apprehending the arrest at the hands of police, in connection with Crime No.676/2024 registered with Police Station Awdhutwadi, District Yavatmal for the offences punishable under Sections 498-A, 323, 354, 354-A, 354-B, 354-C, 377, 509, 511, 504, 506 read with Section 34 of the Indian Penal Code, 1860, the applicants approached this Court for grant of pre-arrest bail.

2. The applicant No.1 is the husband and applicant No.2 is the father-in-law. The report is lodged on an allegation that the marriage of the informant was performed along with applicant No.1, and thereafter, she was cohabiting at the house of the applicants. She was ill-treated physically and mentally by the applicants as well as other family members therefore, she lodged the complaint vide

crime No.707/2021 under Sections 498-A, 354 read with Section 34 of the Indian Penal Code, 1860, and thereafter, she started residing along with her mother, but the present applicants insisted her to withdraw the criminal complaint filed by her, and there was a settlement. Thereafter, again she resumed the cohabitation at her matrimonial house, wherein she was not only ill-treated, but the applicant No.2 has subjected her for outraging her modesty. On the basis of said report, police have registered the crime against the present applicants.

3. Learned counsel for the applicants submitted that, out of matrimonial dispute, the report came to be lodged. He has also placed on record some photographs to show that the informant was residing happily at her matrimonial house, but due to some misunderstanding, she has left the house and is now staying along with her parents, and this false report is lodged. Considering there was a matrimonial dispute between the applicants and the informant and immediate custodial interrogation is not required. He prays for the confirmation of the ad-interim protection.

4. Per contra, learned APP strongly opposed the said application and invited my attention towards the statement of the informant which shows that the informant was not only mentally harassed but she was physically harassed as she was assaulted by the

applicant No.1 as well as she was forced to terminate her pregnancy. He submitted that considering the nature of the allegation, the custodial interrogation of the present applicant is required. In view of that, the application deserves to be rejected.

5. After hearing the learned counsel for the applicants and learned APP for the State, perused the recitals of the FIR as well as statement of the informant from which it reveals that there was an allegation regarding the outraging of modesty against the applicant No.2 as well as the ill-treatment at the hands of the applicant No.1 who is the husband. It further reveals from her statement that there was not only mental harassment but physical harassment was also there and she was forced to terminate her pregnancy. It is apparent that during investigation the investigating agency have recorded the relevant statements of the witnesses. After considering the facts of the present case, it is necessary to take into consideration the observations and the guidelines issued by the Hon'ble Apex Court in the case of **Arnesh Kumar Vs. State of Bihar** reported in **(2014) 8 SCC 273** wherein it held that from a plain reading of the aforesaid provision, it is evident that a person accused of offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years with or without fine, cannot be arrested by the police officer only on its satisfaction that such person had

committed the offence punishable as aforesaid. Police officer before arrest, in such cases has to be further satisfied that such arrest is necessary to prevent such person from committing any further offence; or for proper investigation of the case; or to prevent the accused from causing the evidence of the offence to disappear; or tampering with such evidence in any manner; or to prevent such person from making any inducement, threat or promise to a witness so as to dissuade him from disclosing such facts to the Court or the police officer; or unless such accused person is arrested, his presence in the court whenever required cannot be ensured. These are the conclusions, which one may reach based on facts.

6. It is further observed that law mandates the police officer to state the facts and record the reasons in writing which led him to come to a conclusion covered by any of the provisions aforesaid, while making such arrest. Law further requires the police officers to record the reasons in writing for not making the arrest. The similar guidelines are also issued by the Hon'ble Apex Court in the case of **Satender Kumar Antil Vs. Central Bureau of Investigation and another** reported in **2022 LiveLaw (SC) 577**.

7. As far as the present matter is concerned, admittedly this compliance is not complied by the Investigating Officer and no notice is issued by the

Investigating Officer to the present applicant, in view of Section 41 of the Code of Criminal Procedure as well as he has not recorded his satisfaction why the arrest of the present applicants is required. The observation of the Hon'ble Apex Court in the case of **Satender Kumar Antil Vs. Central Bureau of Investigation and another** (supra) wherein it is specifically held that the non compliance of this provision will inure the applicant to release him on bail. Considering the observations and guidelines issued by the Hon'be Apex Court, the applicant has made out a case for confirmation of the anticipatory bail in his favour. In view of that, I proceed to pass following order:

ORDER

(i) The application is allowed.

(ii) In the event of the arrest, in connection with Crime No.676/2024 registered with Police Station, Awdhutwadi, District Yavatmal for the offences punishable under Sections 498-A, 323, 354, 354-A, 354-B, 354-C, 377, 509, 511, 504, 506 read with Section 34 of the Indian Penal Code, 1860, the applicants **(1) Priyesh Jagdish Jaiswal (2) Jagdish Ramnarayan Jaiswal**, shall be released on anticipatory, on executing P.R. Bond of Rs.25,000/- each with one solvent surety in the like amount.

(iii) The applicants shall attend the concerned Police Station once in a week on Sunday between 10.00 a.m. to 01.00 p.m. and shall cooperate with the investigating agency.

(iv) The applicants shall not in any manner communicate, induce or threat to any prosecution witnesses who are acquainted with the facts of the case.

(v) On failure to attend the Police Station as directed by this Court would lead to the cancellation of the bail.

8. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)