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12.aba.37.2024

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

CRIMINAL APPLICATION (ABA) NO.37 OF 2024

Iliyas Ahamad Riyaz Ahamad

Vs.

State of Maharashtra, Through Police Station Khamgaon City, District Buldhana

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

Court's or Judge's orders

Mr. S. V. Sirpurkar, Advocate for applicant.

Mr. N. R. Rode, APP for respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 16/01/2024

1. By preferring this application, the applicant is seeking pre-arrest bail in connection with Crime No.605/2023 registered with Police Station Khamgaon City, District Buldhana for the offence punishable under Section 406, 420, 498-A read with Section 34 of the Indian Penal Code.

2. The applicant is apprehending arrest at the hands of police, as crime is registered on the basis of report lodged by his wife Shahin Parveen on an allegation that after marriage, she resumed cohabitation at the house of the present applicant but the present applicant has not treated her well and on various occasions, she was assaulted and abused by the present applicant by saying that his marriage with her is performed against his wish. It is further alleged that she

has lodged the report initially, but there was no change in the behaviour of the present applicant. Due to which, she constrained to leave the matrimonial house. On the basis of said report, police have registered the crime.

3. Learned Counsel for the applicant submitted that in fact, the offence under Section 498-A is not made out against the present applicant. The applicant has told the complainant to resolve the issues with her earlier husband. After the separation, she has insisted the applicant to marry her and also lodged report against him under Section 376 of the Indian Penal Code. At the time of marriage, two agreements on Stamp papers of Rs.100/- each were executed mentioning that the informant is bringing an amount of Rs.2,00,000/- in cash and cheque of Rs.1,00,000/- for the purpose of cohabitation. However, she has not brought anything and with false allegation, this report is filed.

4. Admittedly, the alleged offences are punishable less than seven years. It is now well settled that in every cognizable offence arrest is not mandatory. In view of the decision of the Hon'ble Apex Court in **Satender Kumar Antil Vs. Central Bureau of Investigation** reported in **(2022) 10 SCC 51**. The Investigation Officer shall first satisfy himself the necessity of the arrest and shall submit a report before the Magistrate. The

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Investigating Officer shall comply the guidelines issued in the above said decision by the Hon'ble Apex Court.

5. Stand over after one week.

(URMILA JOSHI-PHALKE, J.)