

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 3280 OF 2024

Abdul Aziz Khan

.. Applicant

Versus

State of Maharashtra & Anr.

.. Respondents

.....

- Mr. Prakash Fernandes i/by Jagdamba Jayswal for Applicant
- Mr. Balraj B. Kulkarni, APP for State
- Mr. Arshad Ahmed Khan for Respondent No.2
- Ms. Chhaya Gaikwad, PSI, Sakinaka Police Station present

.....

CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 15, 2025

P. C.:

1. Heard Mr. Fernandes, learned Advocate for Applicant, Mr. Kulkarni, learned APP for State and Mr. Khan, learned Advocate for Respondent No. 2.

2. Applicant - accused has filed the present Application for anticipatory bail under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short, "**BNSS**") in connection with Crime No. 804/2024 registered with Sakinaka Police Station under Sections 323, 504, 506 r/w Section 34 of the Indian Penal Code, 1860 (for short, "**IPC**") and Section 3 and 4 of the Muslim Women (Protection of Rights on Marriage) Act, 2019.

3. At the outset, Mr. Kulkarni, learned APP placed before me a report dated 13.01.2025 stating that yesterday itself that is on 14.01.2025, additional Section / charge / offence under Section 498A of IPC has been added to the FIR. FIR itself is lodged on 21.10.2024. Apprehension of Applicant before me is that in the FIR which is filed there is absolutely no incident whatsoever stated / alleged by the complainant which would require invocation of the provisions of Section 323 read with Section 504 and 506 of IPC. He would also state that in so far as the invocation of Section 34 is concerned and impleadment of the family members of Applicant is concerned, the same is also not borne out from the FIR.

4. With the able assistance of learned Advocate for Applicant, learned APP as also learned Advocate for the Complainant, I have seen the FIR. The FIR states about the marriage of Applicant with complainant and it is stated therein that for the first time sometime between February 2022 and 18.11.2023 on three specific occasions, Applicant had uttered the word "*Talaq*" three times thereby informing the complainant that he was giving her divorce under the Mohammedan Law. Three specific instances of this utterance are seen from the FIR at page No. 19 are as according to the complainant for the first time sometime between February & September 2022 and two times in November 2023. Applicant has thereafter waited for more

than 12 months to file the FIR in 2024. In so far as the incident pertaining to committing crime under Section 323 is concerned, it is stated in the FIR that after 18.11.2023, Applicant beat the complainant with hand and sent her to her parents' house. No other details whatsoever save and except one singular line alleging the alleged offence has been stated.

5. Today when the matter is argued before this Court, learned APP as also learned Advocate for Applicant would inform the Court that stridhan and ornaments which were given to the complainant are in custody of the Applicant and his family members. Learned Advocate for Applicant would inform the Court that stridhan and ornaments which belong to the complainant and all other personal belongings including silver ornaments and other things would be returned back to the complainant. Be that as it may, investigation shall proceed in the appropriate direction in view of the aforesaid statement made by learned Advocate for Applicant.

6. In view of the above, custodial interrogation of Applicant is not necessary or required at this stage. Hence, Applicant is granted pre-arrest bail on the following terms and conditions:-

ORDER

- (i) In the event of the arrest, the Applicant be enlarged on bail on furnishing P. R. Bond in the sum of Rs. 25,000/- with one or two sureties in the like amount;
- (ii) Applicant shall not tamper or attempt to influence the complainant, witnesses or any person concerned with the case;
- (iii) Applicant shall attend the concerned Police Station along with stridhan, ornaments and other belongings of the complainant for returning the same from 20.01.2025 to 24.01.2025 between 10:00 a.m. to 05:00 p.m. and thereafter as and when called by the Investigating Officer;
- (iv) Applicant shall ensure that all stridhan, ornaments and belongings of complainant shall be returned to the complainant;
- (v) Applicant shall inform his latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station;

(vi) If there is a breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the Applicant's bail.

7. It is made clear that the observations made herein are *prima facie* and are confined to this Application and the learned Judge to decide the case on its own merits, uninfluenced by the observations made herein.

8. Application is allowed in the aforesaid terms and is accordingly disposed of.

9. All concerned to act on the authenticated copy of this order.

Amberkar

[MILIND N. JADHAV, J.]

RAVINDRA
MOHAN
AMBERKAR
Digitally
signed by
RAVINDRA
MOHAN
AMBERKAR
Date:
2025.01.15
14:09:14
+0530