

MHCC050066532022



**IN THE COURT OF SESSIONS, BORIVALI DIVISION,
DINDOSHI, GOREGAON, MUMBAI.**

ANTICIPATORY BAIL APPLICATION NO.1988 OF 2022

1. Abhishek Chamanlal Sharma
Aged 44 years, Occ: unemployed
2. Chamanlal Ramlal Sharma
Aged 78 years, Occ: retired
3. Smt. Rita Chamanlal Sharma
Aged 78 years, Occ: Housewife
All adults, Indian Inhabitants
residing at A/25, Swagat Society,
Near Green Field Society,
JVLR, Mumbai 400 093. ...Applicants

Versus

The State of Maharashtra
(MIDC Police Station, Mumbai
in CR No. 12 of 2023) ...Respondents

Shri Himanshu Dasondi, Advocate for applicants.
Shri Ambekar, Addl. PP for the State/respondents.
Shri Vivek Pandey, Advocate for intervener/informant.

Coram: His Honour Additional Sessions Judge
Shridhar M. Bhosale
(C.R.No.1)

DATE : 17th January, 2023.

:ORDER:

1. This is an application under Section 438 of Code of Criminal Procedure (hereinafter referred as "Cr.P.C.") for anticipatory bail on apprehension of their arrest in connection with CR No.12 of 2023 registered at Police Station, MIDC for the offences under Section 498-A, 377, 323, 504, 506 r/w 34 of the Indian Penal Code (hereinafter referred as 'IPC').

2. Perused the application with additional affidavit and documents filed by applicants. Perused the say and investigation papers. Perused application of informant-intervener with additional affidavit and documents.

3. Heard Ld.Advocate Shri Himanshu Dasondi for applicants, Ld.Advocate Shri Pandey for intervener and Ld.Addl.PP Shri Ambekar for the State.

4. In short, informant-victim got married with applicant-accused No.1 on 18.3.2010. It is allegation that since her marriage, she was subjected to cruelty. According to prosecution, she was not provided proper food and she was to eat stale food. Moreover, her mother-in-law was always giving taunts that had it been there was arrange marriage, she would have get dowry. Further it is allegation that applicant-accused No.1 was having relations with one lady. However, he was taking suspicion on the informant. Further it is alleged that applicant-accused No.1 had been insisting for unnatural sex. Moreover, she was assaulted by applicant-

accused No.1. On these counts, complaint came to be lodged and after preliminary inquiry, FIR came to be registered.

5. Ld.Advocate for applicants-accused submitted that on consideration of complaint lodged in the police station, it could be well seen that same was prepared and drafted on the instructions of the advocate to bring the complaint within the ambit and scope of Section 498-A and 377 of IPC. He has brought attention of this court to various documents and vehemently submitted that case put forth by the informant that, due to harassment at the hands of applicants, she was forced to take medical treatment during her pregnancy, is false as medical certificate clearly indicates that as he was roaming around Mumbai, hence she had suffered bleeding and therefore, doctor has advised for rest and not to move around. He has brought to the notice of this court photographs and submitted that applicants-accused were behaving well with the child of the informant and applicant-accused No.1 and therefore, allegation that as informant has given birth to a baby girl, they were not happy and hence, not treating her daughter properly, is totally false. It is further submitted that allegation that applicant-accused No.1 is having relation with one lady, who is friend of sister of applicant-accused No.1 is totally false. He submitted that said girl's family is having relationship with the family of applicants since long and hence they were having visiting terms. He further submitted that even on consideration of the documents filed by intervener, it would be well concluded that no case under Section 498-A of IPC is made out. He further submitted that it is now practice that Section 377 of IPC is to be implicated so as to show that offence is grave, but there

is no evidence to substantiate said allegation. Ld.Advocate for applicants-accused submitted that applicant-accused No.1 had participated in the investigation and submitted all the necessary photographs and documents to police and hence, there is no necessity of any custodial interrogation.

6. It is submitted that both applicant-accused Nos.2 and 3 are incapable even moving at home, hence there was no question to cause any cruelty to informant. He submitted that considering settled legal proposition of law there is no necessity of custodial interrogation, anticipatory bail be granted.

7. Per contra, Ld.Addl.PP has brought attention of this court to the investigation papers and submitted that from the investigation papers and documents filed by applicants-accused and intervener, it could be seen that applicant-accused No.1 is so cruel that he has installed CCTV camera in the bed-room and constrained even the informant to take care while changing clothes and move out of the room. He submitted that earlier applicant-accused No.1 assaulted the informant. It is further submitted that from consideration of the investigation papers, it could be seen that applicant-accused was having relationship with one lady. Though, applicant-accused No.1 denied about the same, but still objection raised by informant and complaint made, even thereafter said lady was allowed to come to home. It is submitted that investigation is in progress and hence, applicants-accused's custody is very much necessary.

8. Ld.Advocate for intervener has brought attention of this court

to the photographs and vehemently submitted that applicant-accused No.1 is so cruel that only because of having grudge against informant due to dispute between them, he has assaulted the child after filing of the present FIR. He submitted that applicant-accused No.1 has earlier also assaulted to informant. He further submitted that earlier also the NC came to be filed by the informant against applicant-accused No.1. Earlier there was incident dated 20.11.2010 and applicant-accused No.1 in writing has apologized for the same incident. He submitted that considering the cruelty meted out by the applicant-accused No.1, anticipatory bail would not be granted.

9. In reply, Ld.Advocate for applicants-accused submitted that said writing dated 21.11.2021 clearly shows that it was taken by force as in the word 'unintentional' deleted 'un' and portrayed as 'intentional'.

10. I have given thoughtful consideration to the submissions of both the parties. At the very outset I would like to state that there are no such serious allegations against applicant-accused Nos.2 and 3. Only allegation against applicant-accused No.3 mother-in-law of the informant is that she was giving taunts to the informant. Moreover applicant-accused Nos.2 and 3 are about 78 years old. Therefore, considering nature of allegations and their age, it is fit case to grant anticipatory bail to them.

11. It is to be noted that FIR also came to be registered under Section 377 of IPC. However, considering FIR, I do not find any material except general allegations to attract Section 377 of IPC.

12. No doubt, in case under Section 498-A of IPC, there is rear occasion to grant custody and more particularly when there is recovery. In the present case at hand, there is nothing to be recovered as stridhan, etc. However, on consideration of the documents filed by intervener, it could be concluded that CCTV camera was installed in the bedroom. Applicant-accused No.1 failed to substantiate case for installation of CCTV camera in the bedroom which ultimately infringed private rights of the informant.

13. Both parties have placed on record photographs to substantiate that they were assaulting each other. Both have placed reliance upon the photographs in respect of the same incident. Needless to say that, while considering application for anticipatory bail, mini trial cannot be conducted. But considering allegations and in absence of any certificate has been produced under Section 65-B of the Evidence Act, during investigation only truthfulness of the allegation in respect of assault can be ascertain.

14. One of the allegation is about having relations of applicant-accused No.1 with one lady. Ld.Advocate for applicants brought attention of this court to the messages sent by the mother of said lady and tried to convince that from the said message itself, it is very clear that informant is making false allegation. However, at the same time informant has brought notice of this court that even after said incident in respect of which mother of the said lady has made complaint and even after filing of FIR, said lady/girl is visiting to the house of applicants and met to the applicant-accused No.1. I find substance in the arguments of the Ld.Advocate for

intervener that had it been there was false allegation by informant in respect of relationship with the said lady, any prudent mother as well as lady against whom allegations are made, would have taken more care and caution and avoid to visit and meet applicant-accused No.1. Therefore, considering nature of allegations and conduct of applicant-accused No.1, in my considered opinion, for proper investigation, fair and just opportunity is required to be given to investigating agency. Therefore, application is required to be party allowed and accordingly, I pass following order:

ORDER

1. Anticipatory Bail Application No.1988 of 2022 is hereby partly allowed.
2. In the event of arrest, applicant-accused No.2 Chamanlal Ramlal Shah and applicant-accused No.3 Smt. Rita Chamanlal Sharma, in connection with CR No.12/2023, registered with Police Station, MIDC, for the offences punishable under Section 498-A, 377, 323, 504, 506 r/w 34 of Indian Penal Code, they be released on executing PR Bond of Rs.15,000/- (Rs. Fifteen Thousand only)each and the like amount with one surety each.
3. Applicant-accused No.2 Chamanlal Ramlal Shah and applicant-accused No.3 Smt. Rita Chamanlal Sharma shall cooperate the investigating officer as and when required.
4. Applicant-accused No.2 Chamanlal Ramlal Shah and applicant-accused No.3 Smt. Rita Chamanlal Sharma shall not tamper with the evidence.

5. Anticipatory Bail application No.1988 of 2022 in respect of applicant-accused No.1 Abhishek Chamanlal Sharma is rejected.
6. Anticipatory Bail Application No.1988 of 2022 stands disposed off accordingly.

17.1.2023

(Sridhar M. Bhosale)
Additional Sessions Judge
Sessions Court,
Dindoshi, Mumbai.

Date of dictation : 17.1.2023
Date of transcription by steno : 19.1.2023
Signed on : 19.1.2023

“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER.”

UPLOADED ON 19.1.2023
AT 5.40 P.M.

Mrs.S.A.Kapare
STENOGRAPHER(Grade-I)

Name of the Judge (with Court Room No.)	HH The 1 st A.P.J. Shridhar M. Bhosale, C.R.No.1
Date of Pronouncement of Judgment/Order.	17.1.2023
Judgment/Order signed by P.O. on	19.1.2023
Judgment/Order uploaded on	19.1.2023