

MHCC050067622022



**IN THE COURT OF SESSIONS AT DINDOSHI
(BORIVALI DIVISION), GOREGAON, MUMBAI**

ANTICIPATORY BAIL APPLICATION NO.2030 OF 2022

IN

C.R.NO.994 OF 2022

1) Ashok Krishnaji Vaidya
An adult Indian Inhabitant, Hindu
Aged about 64 years, Occ- Retired,
Residing at C/401, Shree Ganesh
CHSL, N. G. Park Building No.5,
S. V. Cross Road, Rawalpada,
Dahisar (E), Mumbai – 400 068

.....Applicant No.1
(Original Accused No.2)

2) Aparna Ashok Vaidya,
An adult Indian Inhabitant, Hindu
Aged about 62 years, Occ- Housewife
Residing at C/401, Shree Ganesh
CHSL, N. G. Park Building No.5,
S. V. Cross Road, Rawalpada,
Dahisar (E), Mumbai – 400 068

....Applicant No.2
(Original Accused No.3)

V/s.

The State of Maharashtra
(At the instance of Charkop Police Station, Mumbai)

.....Respondent

Adv. Harshada Kandalkar along with Adv. Mr. Palekar for
applicants/accused.

APP. Mr. Mahajan for State/respondent.

Adv. Shilpa Gosavi for intervenor.

**CORAM : H.H. Additional Sessions Judge,
Shri S. N. Salve.
Court Room No.15.
Date : 28th December, 2022**

ORAL ORDER

This is an application under section 438 of the Code of Criminal Procedure for grant of bail in anticipation of arrest in Crime No.994/2022 registered with Charkop Police Station for the offences punishable under sections 498(A), 406, 354, 420, 323, 504, 506, r/w section 34 of the Indian Penal Code.

2. The applicants-accused have contended that they are innocent persons and having deep roots in society. They are apprehending their arrest in connection with the aforesaid crime registered at the instance of the informant alleging therein that the marriage of the informant was organised with the son of applicants who is working and residing at Dubai. They further contended that during the period of stay, the informant was caught in adulterous relationship with one person and when her husband tried to convince the informant but she was not ready to listen and continued her affair. They further contended that the informant left her matrimonial house without knowledge to her husband and family members and returned back to Mumbai for taking revenge and after coming back to Mumbai she lodged the report and at the instance of her report, police registered the crime. According to the applicants-accused, they are falsely implicated in the crime just to harass them. They further contended that they have never harassed the informant physically and mentally, so no offence under section 498-A of I.P.C. is attracted against them. They further contended

that they are having no criminal antecedents. They have contended that they are permanent residents of the address stated in the application. They have contended that they are having good reputation in the society and so their reputation would be harmed if they are arrested. They also contended that they would abide by each and every terms and conditions imposed by the Court. They have also contended that there is no need of custodial interrogation and no possibility of tampering with prosecution witnesses, if they are released on bail. On the above stated amongst other grounds, the applicants-accused have sought for their release on anticipatory bail.

3. The Ld. A.P.P. for the State has resisted the application by filing say contending that there is strong prima facie evidence against the applicants-accused. He contended that the applicants-accused are involved in the serious offence. He contended that the applicants-accused were harassing the informant physically and mentally. He contended that for the purpose of fair and detail investigation of the crime, their custodial interrogation is necessary for recovery of shridhan. He further contended that if the applicants-accused are released on bail, there is possibility of threatening the informant and witnesses so also it is difficult to police to recover shridhan from applicants-accused. He further contended that custodial interrogation of the applicants-accused is necessary for detail investigation and recovery of Stridhan. He contended that the investigation is not yet completed. On these amongst other grounds, the APP sought for rejection of the anticipatory bail application.

4. I have heard Ld. Advocate Harshada Kandalkar for the

applicants-accused and Ld. A.P.P. Mr. Mahajan for the State and the Ld. Advocate Shilpa Gosavi for the Intervenor.

5. Having heard the Ld. Advocate for the applicants-accused, Ld. A.P.P. for the State and the Ld. Advocate for the Intervenor and on going through the FIR, it may be stated that there is no need of custodial interrogation as far as applicants-accused who are the in-laws of the informant are concerned. This because the offences alleged against the applicants-accused are only under Secs. 498-A, 354, 406, 323, 504, 506 read with Sec.34 of the Indian Penal Code. Considering the nature of the allegations made in the F.I.R. and in view of the decision of Their Lordships of Apex Court in the case of *Arnesh Kumar Vs. State of Bihar, in Cri. Appeal No.1277/2014*, it would be appropriate to grant anticipatory bail to the applicants-accused who are the in-laws of the informant directing the police not to arrest them in the event of their arrest.

6. In so far as recovery of misappropriated gold ornaments of the informant is concerned, I do not find that there is need of custodial interrogation for purpose of recovery of the same, in view of the decision of Hon'ble High Court, Mumbai in *A.B.A. No.851/2013 (Mr. Sofin Abbas Patel V/s. State of Maharashtra & Anr.)*, wherein in para 6 it is observed that-

“The counsel for the complainant submits that the jewellery belonging to the complainant is with the applicant and therefore custodial interrogation would be imperative. However, the criminal proceeding is not a recovery proceeding and therefore, the applicant cannot be

sent to the police custody for the same.”

7. Thus, in view of the above observations, it can not be said that proceedings under Section 498A/406 IPC are meant for the recovery of jewellery and dowry articles. The applicants-accused cannot be denied bail only on the ground that their release would render the recovery of jewellery and other dowry articles difficult. The informant/wife can, if she so chooses, move the Civil Court for recovery of articles.

8. Further, it appears that the husband of the informant has filed petition for divorce against the informant prior to lodging the report by her. Possibility cannot be ruled out that the informant has lodged the report against the applicants as a counter blast to the petition for divorce filed by her husband.

9. Furthermore, it appears that the applicant-accused are permanent residents of the address given in the title clause of the application and so there is no possibility of their fleeing away from justice. Apart from that, there is no question of tampering with prosecution evidence considering the averments made in the First Information Report in so far as the present applicants are concerned. Therefore, considering the nature and gravity of the accusations, it will be appropriate to grant bail to the applicants-accused in the event of arrest in the aforesaid crime.

10. For these reasons, to my mind, the applicants-accused are entitled for their release on bail. Since considering the nature of

allegations, I do not find that there is prima facie case to hold that the applicants-accused have committed offence punishable u/s. 406 of IPC. However, to strike out the balance between the liberty of the applicants-accused and the interest of the prosecution to investigate the crime, it would be appropriate to direct the applicants-accused to attend the Police Station, till filing of the charge-sheet.

In the result, the following order is made :

ORDER

1. Anticipatory Bail Application No.2030 of 2022 is allowed.
2. The Charkop Police Station is directed that the applicants-accused No.1 Ashok Krishnaji Vaidya and accused No.2 Aparna Ashok Vaidya in crime number 994/2022 registered with Charkop Police Station for the offence punishable under 498-A, 354, 406, 323, 504, 506 read with Sec.34 of the Indian Penal Code, in the event of their arrest, they be released on bail on furnishing their P.B. and S.B. in sum of Rs.15,000/- (Rupees Fifteen Thousand Only) each subject to following conditions :
 - (a) The applicants-accused shall not directly or indirectly make any inducement, threat or promise to any other persons acquainted with the facts of the accusation against them so as to dissuade them from disclosing such facts to the Court to any other officer.
 - (b) The applicants-accused shall attend the concerned police station from 11:00 am to 03:00 pm on each Sunday, till filing of the charge-sheet.
3. Breach of any of the conditions shall entail cancellation of bail.

4. Inform to the concerned Police Station, accordingly.
5. Accordingly, Anticipatory Bail Application No.2030 of 2022 stands disposed of.

Dt.28/12/2022

(S. N. SALVE)
 Addl. Sessions Judge,
 City Civil & Sessions Court,
 Borivali Division, Dindoshi, Mumbai

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

UPLOAD DATE 02.01.2022
 AND TIME : 11.15 a.m.

Mrs. T. S. Bhogte
 NAME OF STENOGRAPHER

Name of the Judge (with Court Room No.)	HHJ Shri S. N. Salve (Court Room No.15)
Date of Pronouncement of Judgment/Order	28.12.2022
Judgment/Order signed by P.O. on	02.01.2023
Judgment/Order uploaded on	02.01.2023