

MHCC050064152022



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

ANTICIPATORY BAIL APPLICATION NO. 1922 OF 2022

IN

(C.R. No. 621 of 2022 of Meghwadi Police Station, Mumbai)

Smt. Irshad Ibrahim Pathan @ Irshadbanu Ibrahim Pathan,

Age : 34 yrs., Occupation : Teacher.

R/o : Plot No. 356, Road No. 19,

Near Ganesh Mandir, Jawahar Nagar,

Goregaon W. Mumbai 400 104 and

R/at 708, Swami Vivekanand CHS.,

S. V. Road, Goregaon (W).

Mumbai 400 104

..Applicant

Vs

The State of Maharashtra

(through Meghwadi Police Station)

..Respondents

Ld. Adv. Sagar Shah, for the applicant.

Ld. APP P.K. Mahajan, for the State.

Ld. Adv. K.M. Tripathi, for the intervenor.

CORAM : H.H. THE ADDITIONAL SESSIONS JUDGE

R.M. MISHRA

(C.R.NO.4)

DATE : 19th January, 2023

ORAL ORDER

This is an application for grant of anticipatory bail under section 438 of Cr.P.C., in connection with C.R. No. 621 of 2022, registered with Meghwadi Police Station for the offences punishable under sections 498-A, 406, 323, 504, 506 of the Indian Penal Code.

2 Perused application and say.

3 At the instance of the complainant/victim aforesaid offence came to be registered.

It is the case of the prosecution that the complainant was residing along with his family in a rented house of one Shabira Pathan. The complainant was residing there since her childhood till March, 2016. The family of landlord consisting Shabira Pathan, his son Salman, daughters Farheen and Irshad and her husband Ibrahim Pathan. At that time, Farheen Pathan was running a parlour at Dubai and Salman was studying in Engineering at England. In March 2016, the complainant's family shifted in another rented house at Jogeshwari (E). In the month of November 2021, the complainant's father received a phone call of the applicant and he was informed that Shabira Pathan is suffering from Cancer and she is admitted in hospital. In view of her serious condition, Shabira Pathan insisted for the marriage of the complainant with her son Salman. They had shown their readiness to accept the complainant in the culture in which she was brought up. In view of serious condition of Shabira Pathan and continuous insistence on their part, the marriage of the complainant was solemnized with Salman Pathan as per the

customs in their community. Immediately after their marriage Shabira Pathan passed away.

4 In the initial period of 15 to 20 days everything was going smoothly. Thereafter, the complainant's husband started harassing her frequently on trifle issues. The applicant also used to taunt the complainant. The complainant used to be caused to perform the entire household works. The complainant's husband used to prevent her to go to college and used to scold her for wearing clothes which the complainant used to wear since beginning. The complainant's husband used to raise objection for talking by the complainant with her parents on phone call. In view of causing mental harassment by the accused persons, the complainant was required to take treatment in the month of January, February and May 2022 in Milat Hospital, Jogeshwari. The complainant was also advised to take treatment with psychiatric expert. After passing 12th standard when the complainant was intending to take admission in LL.B, she was restrained by her husband from appearing in entrance examination. The complainant was thereafter, caused to leave her matrimonial house. While residing at her parent's house the complainant had been to Himachal Pradesh towards her matrimonial uncle. On her return from there, she was called upon by her husband on 24/07/2022 in Infinity Mall where her husband took Mangalsutra of the complainant. Thereafter on 25/07/2022, the complainant's husband went to South Africa for a job. On 21/08/2022, the complainant's husband made a phone call to the father of the complainant and told that now he will not co-habit with the complainant and he can do

whatever he wants. The applicant had retained golden earrings and chain of the complainant while she was residing in her matrimonial house. In view of the ill-treatment and the harassment at the hands of her husband and sisters-in-law, the complainant lodged the report in the police station.

5 By this application, the applicant has contended that her husband is staying away due to his job and she is residing with her minor child and aged in-laws. It is contended that the marriage of the applicant was solemnized on 17/08/2016 and after marriage, she is residing at her matrimonial home. At the time of the marriage of the complainant, mother of the applicant was seriously ill and nobody was there to take care of their mother, therefore, the applicant used to come and stay with her ailing mother. As the complainant was newly married, therefore, the applicant and her mother did not want to burden the complainant for taking care for her ailing mother-in-law. The applicant used to support the complainant to pursue her education and always motivated her. However, the complainant used to raise quarrel of petty issues with the family members. There were some trifle issues between the complainant and her husband. The complainant used to fight with her husband and thereafter she has left her matrimonial house on 01/06/2022 without intimating any of the family members. The parents of the complainant also used to issue threats to the applicant and her brother for implicating in false case. On 22/08/2022, the complainant's father called the husband of the complainant and issued threats by uttering abuses. The complainant's husband has recently joined

Merchant Navy and another sister of the applicant permanently resides at Dubai. The applicant is innocent and she has nothing to do with the alleged offence. She is not required for any custodial interrogation. She is ready to abide the terms and conditions imposed by the court. The applicant, therefore, prayed for her release on anticipatory bail.

6 Application is resisted by the prosecution vide say Exh. 03 mainly on the ground that stri-dhana of the complainant misappropriated by the accused are yet to be recovered. The complainant's husband and one of the sister-in-law went away to abroad and if the applicant is granted anticipatory bail she also would leave the country by absconding to abroad. It is thus, contended that the application is liable to be rejected.

7 The complainant also filed intervener application Exh. 04 resisting the application to release the applicant on anticipatory bail.

8 After considering the submissions of learned advocate for the applicant, intervener and learned APP. I have also gone through the case diary.

9 After careful consideration of the entire facts and circumstances, it reveals that the marriage between the complainant and her husband was solemnized hurriedly in view of serious condition of her mother-in-law. While the complainant was residing in her matrimonial house, their family consisting the complainant, her

husband, father-in-law and the applicant. Though it is the contention of the complainant that the applicant was staying there, the applicant used to come and stay there to look after her ailing mother. Having regard to the nature of the ailments and harassment as alleged in the FIR, it reveals that there is no allegation of physical assault or cruelty at the hands of the applicant. The complainant has left her matrimonial house on 10/06/2022 in view of the insistence on the part of her husband. Thereafter, in the month of October 2022, report came to be lodged in the police Station.

10 So far as the role of the applicant is concerned, apart from the allegations of taunting and oral harassment, it is alleged that the applicant has retained the golden chain, earnings, Mangalsutra and ring of the complainant which were given in the marriage by the applicant and her brother. In fact, efficacious remedy is available to the complainant to file appropriate proceeding for the recovery of stri-dhana i.e. ornaments etc. from her in-laws and this cannot be the ground for denying anticipatory bail. Having regard to the nature of the allegations, in my view, purpose will be served if the applicant is granted anticipatory bail by imposing certain terms and conditions. In this view of the matter, following order is passed :

ORDER

- 1) Application under section 438 of the Code of Criminal Procedure for the grant of anticipatory bail is allowed.
- 2) In the event of arrest of the applicant **Smt. Irshad Ibrahim Pathan @ Irshadbanu Ibrahim Pathan**, in

connection with C. R. No. 621 of 2022, registered with Meghwadi Police Station for the offences punishable under sections 498-A, 406, 323, 504, 506 of the Indian Penal Code, she be released on bail, on her executing PR Bond of Rs. 15,000/- (Rupees Fifteen Thousand Only), with one solvent surety in the like amount, on the following conditions-

- a) The applicant shall remain present in the police station as and when called upon by the Investigating Officer and shall co-operate the Investigation agency till the investigation is completed.
- b) The applicant shall not attempt to threat or pressurize the complainant or other prosecution witnesses in any manner.
- 3) Concerned Police Station be informed accordingly.
- 4) Anticipatory Bail Application No. 1922 of 2022 is hereby disposed of accordingly.

sd/-

(R.M. Mishra)

Additional Sessions Judge,
Borivali Div., Dindoshi, Mumbai

Dt. 19/01/2023

Dictated on : 19/01/2023
Transcribed on : 19/01/2023
Checked on : 19/01/2023
Signed on : 19/01/2023

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

20/01/2023 at 4.15 p.m.
UPLOAD DATE AND TIME

Mrs. S.B. Vichare
NAME OF STENOGRAPHER

Name of Judge (with Court room no.)	HHJ R.M. Mishra, City Civil & Sessions Court, Borivali Div., Dindoshi, Mumbai (C.R.No. 04)
Date of Pronouncement of JUDGEMENT/ORDER	19/01/2023
JUDGEMENT/ORDER signed by P.O. on	19/01/2023
JUDGEMENT/ORDER uploaded on	20/01/2023