



**IN THE COURT OF SESSIONS AT DINDOSHI
(BORIVALI DIVISION), GOREGAON, MUMBAI**
ANTICIPATORY BAIL APPLICATION NO.1842 OF 2022
IN
(C. R. No.1293 of 2022 of Malad Police Station)

- | | | | |
|----|---|---|---------------|
| 1. | Mr. Gaurang Mahendra Wala, |] | |
| | Age 33 years, Occ : Service, |] | |
| 2. | Mr. Mahendra Mohanlal Wala, |] | |
| | Age 64 years, Occ : Retired, |] | |
| | Both are adults, Indian Inhabitants, R/a. |] | |
| | G-2/A Wing, Shiv Krupa Dhanjiwadi, |] | |
| | Rani Sati Marg, Malad (E), |] | |
| | Mumbai 400 097. |] | ...Applicants |
| | Versus | | |
| | The State of Maharashtra, |] | |
| | At the instance of Malad Police Station. |] | |
| | |] | ...Respondent |

Ld. Adv. Navin Shrivastava for the applicants.

Ld. APP Sachin Jadhav for the State.

Ld. Adv. Pranoti Pawar for intervenor.

**CORAM : SHRI M.I. LOKWANI,
ADDITIONAL SESSIONS JUDGE,
COURT ROOM NO.10.**

DATE : 19th December, 2022

ORAL ORDER

This is an application filed by the applicant Nos. 1 to 3 under Section 438 of the Code of Criminal Procedure 1973, for granting

anticipatory bail in connection with Crime No.1293/2021, registered with Malad Police Station for the offences punishable under Sections 498A, 354, 406, 323, 504 r/w. 34 of the Indian Penal Code.

Brief facts of the prosecution case are as under :

2. It is alleged by the complainant Zinal Gaurang Wala that her marriage took place with applicant No.1 on 27.02.2020. However, it was is difficult for them to live together. Their way of life are completely different. There has been no cohabitation between them. The applicant No.1 is unable to cohabit with her and unable to fulfill her marital needs. It is alleged that applicant No.2 taking advantage of the situation and touched her waist and other parts of bodies. He molest her by showing obscene web series on mobile, therefore, complainant stated the above facts to applicant Nos. 1 & 3 but it is in vain. It is alleged that from 27.02.2020 to 09.11.2021, she was subjected to mental and physical cruelty at the hands of applicants. The applicants have misappropriated her stridhan. They used to abuse and beat her by one or other ground. She was subjected to cruelty at the hands of applicants, hence, she lodged report against applicants at Malad Police Station by which Crime No. 1293/2022 registered against the applicants.

3. The Ld. Advocate for applicants submitted that applicant Nos. 1 to 3 are innocent. They have not committed the alleged offence. The allegations made against them are false. It is submitted that on 09.11.2021, the complainant herself left matrimonial home. She already took her stridhan and jewellery with her. There is nothing remained to recover from the applicants. The applicants are ready to abide any

conditions imposed upon them. Ld. Advocate for applicants relied upon following citations :

- (i) **Rajesh Shrama V/s. The State of Uttar Pradesh, decided by Hon'ble Supreme Court of India on 27.07.2017.**
- (ii) **Priyanka Rohit Singh V/s. The State of Maharashtra and Anr., decided by Hon'ble Bombay High Court on 27.10.2021.**
- (iii) **Kaivan Jitendra Lalan V/s. Te State of Maharashtra, decided by Hon'ble Bombay High Court on 26.02.2021.**
- (iv) **Amiruddin V/s. State, decided by Hon'ble Delhi Hight Court on 04.05.2016.**
- (v) **Mr. Shrikant M. Vhatkar & Ors. V/s. The State of Maharashtra, decided by Hon'ble Bombay High Court on 05.12.2014.**

Lastly prayed for allow the application.

4. On the other hand, Ld. APP raised strong objection in view of reply at Ex.2 and submitted that acts of the applicants are serious. The stridhan yet to be recovered. If they are released on bail, they will pressurise the complainant and witnesses. Hence, prayed for rejection of the application.

5. The intervenor appeared and filed reply at Ex.3 and also filed documents and opposed the application for anticipatory Bail.

6. Considering the submission of both sides and gone through the record, it appears that applicant Nos. 1 to 3 involved in Crime No.1293/2022, registered at Malad Police Station for the offences punishable under Sections 498A, 354, 406, 323, 504 r/w. 34 of the Indian Penal Code. It appears that matter is sent for mediation but it is failed. Ld. APP submitted in respect of Stridhan and therefore,

submitted for custodial interrogation. However, in case of **Kaivan Jitendra Lalan V/s. State of Maharashtra, decided by the Hon'ble Bombay High Court dated 26.02.2021**, cited supra it is observed that “criminal proceedings are not recovery proceedings, therefore, pre arrest bail cannot be refused for recovery of stridhan.” There are several other reported case laws of Hon'ble High Court and Hon'ble Apex Court wherein it is observed that for recovery of stridhan, pre arrest bail cannot be refused. Hence, it is settled that for recovery of stridhan, bail cannot be refused. Apart from that there is nothing to recover from the applicants. Hence, custodial interrogation of the applicants not warranted. Therefore, it would be appropriate to enlarge the applicants on pre arrest bail. The apprehension of the prosecution is that, if the applicants are enlarged on pre-arrest bail then they will pressurize the complainant and witnesses. But, the said care can be taken by imposing appropriate conditions. Hence, I pass following order.

ORDER

1. Anticipatory Bail Application No.1842/2022 is hereby allowed.
2. In the event of arrest of the applicants Applicants i.e. applicant No.1-Mr. Gaurang Mahendra Wala and applicant No.2-Mr. Mahendra Mohanlal Wala, they be released on bail on executing P.R. Bond of Rs. 25,000/- (Rupees Twenty Five Thousand only) each with one or two sureties of like sum in connection with Crime No.1293/2022 registered with Malad Police Station for the offence punishable under Sections 498(A), 354, 406, 323, 504 r/w. 34 of the Indian Penal Code, on following conditions :
 - i) They shall attend the Malad Police Station on every Sunday from 10.00 am to 01.00 pm till filing of charge-sheet and to co-operate the IO in investigation.

- ii) They shall not tamper with prosecution evidence.
 - iii) They shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the fact of the case so as to dissuade them from disclosing such a fact to the court or to any police officer.
 - iv) They are directed to furnish their local & native address and their contact numbers to Malad Police Station.
 - vi) Inform to the Malad Police Station.
3. Anticipatory Bail Application No.1842/2022 stands disposed of accordingly.

Dictated and pronounced in open Court.

Dt. 19/12/2022

(M.I. LOKWANI)
Additional Sessions Judge,
Borivali Div., Dindoshi, Mumbai

Dictated on : 19/12/2022
Transcribed on : 19/12/2022
Checked & Signed by HHJ on : 20/12/2022

CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER.” UPLOAD DATE AND TIME 20.12.2022 AT 04:30 P.M. NAME OF STENOGRAPHER PRASAD S. TARE	
Name of Judge (with Court room no.)	HHJ Shri M.I. Lokwani, City Civil & Sessions Court, Borivali Div., Dindoshi. (C.R.No.10)
Date of Pronouncement of JUDGEMENT/ORDER	19/12/2022
JUDGEMENT/ORDER signed by P.O. on	20/12/2022
JUDGEMENT/ORDER uploaded on	20/12/2022 (Corrected as Anticipatory Bail Application in place of Bail Application and again uploaded)