

Pratik Vireshbhai Vavadia vs The State Of Gujarat on 28 February, 2022

Author: Ilesh J. Vora

Bench: Ilesh J. Vora

R/CR.MA/15281/2020

ORDER DATED: 28/02/2022

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION NO. 15281 of 2020

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PRATIK VIRESHBHAI VAVADIA

Versus

THE STATE OF GUJARAT

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Appearance:

MR DIPAK H SINDHI(5710) for the Applicant(s) No. 1

MR MANAN MEHTA, APP for the Respondent(s) No. 1

MR S M KIKANI(7596) for the Respondent(s) No. 2

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CORAM:HONOURABLE MR. JUSTICE ILESH J. VORA

Date : 28/02/2022

ORAL ORDER

1. Apprehending the arrest, the applicant herein seeks anticipatory bail in connection with the FIR being C.R.No. 11210048200949 of 2020 registered with Umara Police Station, Dist. Surat, for the offences under Sections 498-A, 323, 504, 506(2) and 114 of the IPC and Sections 3, 4, 5 and & of the Dowry Prohibition Act.

2. Facts and circumstances giving rise to the present application is that, the applicant herein is the husband of informant and their marriage was solemnized on 19.09.2006 and out of their wedlock, they blessed with one child, born on 14.09.2009. Initially, parties were residing together in joint family at Ankleshwar, Dist. Bharuch and thereafter, at Ahmedabad for a period of one year. The applicant herein serving with private company and was transferred at Ghaziabad, Uttar Pradesh where, they resided together for a period of five years and thereafter, they went to Australia, where, the informant delivered a child. It is alleged in the FIR that, the applicant and her in-laws subjected her mental and physical cruelty and demanded dowry. It is alleged that, the applicant - husband used to beat her and having R/CR.MA/15281/2020 ORDER DATED: 28/02/2022 habit of drinking liquor. It is alleged in the FIR that, when they were at Australia, she was harassed by the accused, as a result of which, she had filed a complaint before the magisterial court at Dandenong, Australia, however, matter was settled amicably. It is further alleged in the FIR that, she along with her

husband and child returned back to India and again, settled Ghaziabad, where, she was harassed by the applicant and in-laws. It is alleged in the FIR that, after one year, she had been driven out from the home by the applicant and she came to Surat city. It is alleged that, on 23.07.2020, to save her matrimonial life, she decided to reside with the applicant and had gone to Ghaziabad, where, she stayed there for about 13 days. It is further alleged in the FIR that, when she was at Ghaziabad, she was brutally beaten by the applicant husband, for which, she made a complaint with Indrapuram Police Station and on the next day, she came back at Surat and taken treatment at private hospital for the injuries caused by the applicant husband. It is also alleged by the informant that, as a part of harassment, the original birth certificate and passport of the child being intentionally retained by the husband and still, it is with the husband. In this background facts, the informant lodged an FIR on 29.08.2020 for the alleged offence as referred above for the harassment, cruelty and offence of demand of dowry.

3. The applicant along with his parents moved an anticipatory bail application before the Sessions Court and the same is partly allowed. The Sessions Court granted pre-arrest bail to the parents. So far present applicant is concerned, while rejecting his bail application, the Sessions court noticed the various incidents of harassment and facts of demand of dowry and came to the conclusion that, the allegation against the applicant husband, prima facie, is made out for the alleged offence. The Sessions R/CR.MA/15281/2020 ORDER DATED: 28/02/2022 Court noted that the applicant husband refused to handover the original documents like birth certificate and passport of the son, as the documents are necessary for getting admission in the school etc.

4. This Court has heard Mr. Dipak Sindhi, learned counsel for the applicant, Mr. Sanjay Kikani, learned counsel for the original informant and Mr. Manan Mehta, learned APP for the State.

5. Learned counsel for the applicant contended that;

(i) Since 2011-12, the informant wife along with child residing separately at Surat. In the year 2020, the applicant herein arranged tickets, so as to enable the complainant and son to reach at Ghaziabad. The intention of the applicant was to reside together and put to end the matrimonial dispute. However, without any reason, after leaving Ghaziabad, she lodged an FIR at Surat, implicating the old age parents only with a view to harass them.

(ii) It was submitted that, the informant wife suppressed the material facts while lodging the FIR with respect to proceedings of maintenance and child custody matter and the case filed by the husband for restitution of conjugal rights. He urged that the applicant husband is regularly paying Rs.9,000/- as maintenance amount to the wife and child. The applicant husband has categorically made a statement that, he does not have birth certificate and passport of the child.

In view of the aforesaid contentions, Mr. Sindhi, submits that, after delay of 10 years, the alleged FIR being lodged with a view to harass the applicant and his parents and therefore, case is made out for granting protection in form of anticipatory bail.

R/CR.MA/15281/2020 ORDER DATED: 28/02/2022

6. Mr. Kikani, learned counsel for the informant submitted that, when the wife was at Ghaziabad and thereafter at Australia, she was tortured and physically abused by the applicant husband and in-laws. It was submitted that, in the month of July, 2020, to save the matrimonial relationship, the wife went to her matrimonial home, where, she was beaten by the applicant, as a result of which, she had called the police by dialing 100 and also lodged the complaint before Indrapuram Police Station at Ghaziabad and was driven out from the matrimonial home and with the intervention of the police, she could get travel ticket for Surat and after coming to Surat, she took treatment at private hospital for the injuries caused by the applicant. The husband has with no reason withheld the birth certificate and passport of the son which itself shows his mental state of mind towards the wife. Lastly, it was submitted that, the learned Sessions Judge has assigned proper and sound reasons for rejecting the anticipatory bail application of the applicant husband and therefore, no case is made out for exercising discretion in favour of the applicant.

7. Learned APP Mr. Mehta, appearing for the State adopting the arguments advanced by Mr. Kikani, vehemently opposed the application contending that, considering the conduct of the applicant, and allegations made for harassment and demand of dowry, the application being no merits, deserves to be dismissed.

8. Having heard the learned counsel for the respective parties and upon perusal of the record, it appears that the informant wife was subjected to cruelty by the husband when she was residing at Ghaziabad and Australia. Record indicates that when she was at Australia, she made complaint before the magisterial court, wherein, her statement was recorded and finally, matter was settled amicably. If we read the settlement agreement dated 13.04.2011, it was assured by the applicant husband that, he will R/CR.MA/15281/2020 ORDER DATED: 28/02/2022 not harass to the wife. Thereafter, on 05.09.2013, declaratory statement was made by the husband, inter alia, stating that, he will keep the wife and treat her respectfully and if need be arise, he will also give copy of the birth certificate and passport of the child. However, this marriage could not run smoothly and in the year 2012-13, she came to Surat city with the son. In the month of July, 2020, she had been called by the applicant at Ghaziabad, where, again she was beaten by the applicant, as a result, she called emergency police at home and lodged complaint. It is pertinent to note that the applicant herein admitted during the investigation that, he having a copy of the birth certificate of the child.

9. In the aforesaid facts, this Court is of prima facie view that, there is a reasonable ground to believe that the alleged offence is committed by the applicant herein. It is settled law that the anticipatory bail can be granted only in exceptional circumstances when the Court is prima facie view that the applicant has falsely been roped in the crime. In the facts of the present case, it cannot be said that only with a view to harass him, the FIR being lodged by the wife.

10. For the foregoing reasons and considering the allegations made against the applicant, this Court is of considered view that, it is not a fit case to grant anticipatory bail and therefore, the applicant herein failed to make out a special case for exercise of power to grant anticipatory bail.

11. As a result, present application fails and is hereby dismissed. Rule is discharged. Interim relief stands vacated.

(ILESH J. VORA,J) SUCHIT