

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ Bail Application Number 2012/2009

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Date of reserve : 30.10.2009
Date of decision: 05.11.2009

VIJENDER SHARMA ...PETITIONER
Through: Mr.Rakesh Tiku and Mr.Shailendra
Babbar, Advocates

Versus

STATE ...RESPONDENT
Through: Mr.Arvind K.Gupta, APP for the State
Mr.Pratap Singh, Advocate for the
complainant

CORAM:
HON'BLE MR. JUSTICE MOOL CHAND GARG

1. Whether the Reporters of local papers
may be allowed to see the judgment? Yes
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be
reported in the Digest? Yes

MOOL CHAND GARG, J.

1. This order shall dispose of the bail application filed by the petitioner under Section 438 Cr.P.C. for grant of anticipatory bail in connection with FIR No. 107/2009 under Section 498-A/406/34 IPC registered at Police Station Nihal Vihar.

2. It is submitted on behalf of the petitioner that the petitioner got married to Smt.Darshana, complainant on 2.3.2006 as per Hindu rites and ceremonies and during the marriage ceremony some presents and gifts,

according to the customs of parties, were exchanged between the bride and bridegroom. It is also submitted that soon after the solemnization of marriage, the complainant started treating the petitioner and his family members with cruelty and had left the matrimonial house on 22.12.2008 without any reason and while leaving the matrimonial house, she took away a number of articles with her. Thereafter, she lodged a false complaint against the petitioner and his family members with the Crime against Women Cell, Kirti Nagar, New Delhi, where the petitioner offered to reconcile with his wife. The first application filed by the petitioner for grant of anticipatory bail was dismissed vide order dated 24.7.2009. It is also submitted that since the petitioner was willing to return alleged dowry articles to the wife/complainant, a suit bearing No. 96/09 was filed seeking directions to receive articles from the petitioner and as counsel for wife/complainant had no objection on deposit of articles with the SHO Police Station Nihal Vihar, the order was passed accordingly. The complainant filed a petition bearing No. CM(M) 931/2009 for quashing of this order. The said petition was dismissed vide order dated 8.9.2009 and while dismissing the aforesaid petition, both the parties were directed to appear in person for conciliation on 24.9.2009. However, the complainant intentionally did not appear before the court for mediated settlement. In terms of the order dated 4.8.2009, the petitioner deposited the alleged dowry articles with Police Station Nihal Vihar on 8.8.2009 vide seizure memo dated 8.8.2009. Thereafter, the petitioner filed a second application for grant

of anticipatory bail and during those proceedings, the petitioner paid a sum of Rs. 31,000/- to the complainant. However, the said bail application was dismissed vide order dated 5.10.2009. It is also submitted that the petitioner is ready and willing for any kind of compromise to save his marriage and is ready to co-operate for any kind of settlement. However, the complainant is not willing to reconcile the matter. It is also submitted that the petitioner is ready and willing to return the jewelry and gold jewelry articles weighing 47 grams were offered to return to the complainant. Apart from this, the petitioner had also offered to return the silver jewelry articles weighing 60 grams besides two gold watches. It is also submitted that all the incidents alleged by the complainant have taken place in Panchkula and not even a single incident was committed within the jurisdiction of Delhi. It is also submitted that no allegation of cruelty has been leveled against the petitioner. It is also submitted that the petitioner has strong roots in the society and there is no likelihood of him absconding from the jurisdiction of this court and that he undertakes to co-operate with the investigation as and when directed and also undertakes not to tamper with the evidence or with the witnesses. It is also submitted that no allegation of cruelty has been leveled against the petitioner. The petitioner has not committed any previous offence and even in the present FIR he has been falsely implicated.

3. Heard counsel for the parties and have perused the records of the case. The relevant portion of the order dated 6.10.2009 passed by the learned ASJ dismissing second application moved by the petitioner for grant of

anticipatory bail is as under:-

“Taking into consideration the alleged incident of cruelty mentioned in the complaint against the applicant which also include that once an effort was allegedly made to set her on fire by keeping one burner of the gas open and then sending her to prepare the tea and when she lighted the burner, due to one burner which was already open, the fire spread and her clothes caught fire, the applicant is the husband of the complainant and this is second application for anticipatory bail, there is no change in the circumstances which can entitle the applicant to be enlarged on bail, the prayer for grant of anticipatory bail is rejected.”

4. However, in this order there is also a mention that no MLC was prepared. This goes to show that the authenticity and admissibility of this evidence is not free from doubt and would require evidence to be led during the course of trial.

5. The best case of the complainant is that the jewelry worth 170 grams was given in marriage. However, according to the petitioner besides having returned other items, he is ready to return 47 grams of gold jewelry and 60 grams of silver jewelry besides two old watches. He has also paid a sum of Rs. 31,000/- to the complainant under the orders of learned Singled Judge of this Court. He is ready and willing for conciliation but it is the complainant who has not cared to join the mediation proceedings.

6. Taking all these facts into consideration, I am of the view that the petitioner is entitled to be released on anticipatory bail. Accordingly, I order that the petitioner if arrested in connection with the present F.I.R., he shall be released on bail on his furnishing bail bond in the sum of Rs.25,000/- (rupees twenty five thousand only) with one surety of the like amount to the satisfaction of the Arresting Officer/Investigating Officer subject to the conditions that the petitioner will return all the gold/silver jewelry

articles still in his possession to the complainant before the concerned SHO on Tuesday i.e. 10.11.2009 at 11 am and the petitioner will deposit a sum of Rs.1 lakh additionally with the Registrar General of this Court in the name of the complainant, which amount shall be disbursed subject to the outcome of the trial of this case. The petitioner will join investigation as and when required and would not intimidate the witnesses.

7. Bail application stands disposed of. Pending applications also stand disposed of.

MOOL CHAND GARG, J.

November 05, 2009
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