

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

% Reserved on: 1st November, 2011

Decided on: 8th November, 2011

+ **CRL.M.C. 3513/2011 & Crl.M.A. 12462/2011 (stay)**

KAPIL SETHI Petitioner

Through: Mr. Prashant Mendiratta, Adv.

versus

STATE Respondent

Through: Mr. Manoj Ohri, APP for State with SI
Rakesh Kumar, PS CWC Nanakpura.
Mr. K.K. Manan, Mr. Mustafa Arif,
Mr. Nipun Bhardwaj, Adv. for
complainant.

AND

+ **CRL.M.C. 3487/2011**

KOMAL SETHI Petitioner

Through: Mr. K.K. Manan, Mr. Mustafa Arif,
Mr. Nipun Bhardwaj, Ms. Poonam
Yadav, Advs.

versus

STATE & ANR Respondents

Through: Mr. Manoj Ohri, APP for State with SI
Rakesh Kumar, PS CWC Nanakpura.
Mr. Prashant Mendiratta, Adv. for R-2

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. Whether the Reporters of local papers may Not Necessary
be allowed to see the judgment?

2. To be referred to Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

MUKTA GUPTA, J.

1. The present petitions challenge the order dated 13th October, 2011 whereby the Petitioner Kapil Sethi was granted anticipatory bail subject to certain conditions. The grievance of the Petitioner Kapil Sethi is that while granting anticipatory bail, he has been directed to fulfill the onerous condition of placing on record the FDR in the sum of Rs. 15 lakhs in the name of the learned District and Sessions Judge, subject to the final outcome of the cases qua the claim of the Complainant about her jewellery articles being in custody of Kapil Sethi.

2. The grievance of the Petitioner Komal Sethi, the Complainant against the impugned order is that by the impugned order Kapil Sethi has been permitted to travel to USA because of which he is likely to flee from justice which would cause irreparable damage to the process of law underway between the two Petitioners in the different proceedings going on before different Courts.

3. Briefly the facts leading to passing of the impugned order are that the parties were married on 28th September, 2006 whereafter they left for USA.

The Petitioners could not live compatibly resulting in Komal Sethi filing a complaint with the Crime against Women Cell in January 2010 consequently FIR No. 114/2010 under Sections 498A/406/34 IPC was registered at PS CAW Cell, Nanakpura, Delhi. Despite notice being issued, the Petitioner Kapil Sethi did not join the inquiry and thus on 21st May, 2011 on an application filed by Kapil Sethi for anticipatory bail, the learned Additional Sessions Judge directed the Petitioners to appear in person on 2nd June, 2011. Though the Petitioner Kapil Sethi offered that he would like to resolve through mediation however, it appears that no efforts were made by him to resolve the disputes. In fact, it was the grievance of the Complainant Komal Sethi before the learned Additional Sessions Judge that in the garb of trying to resolve the matter Kapil Sethi was buying time and he had come to the country only for the purpose that he could get his visa extended. The learned Trial Court while permitting the Petitioner Kapil Sethi to withdraw the application permitted the parties to approach the Mediator for mediation at any of the mediation centre of their choice. The custody of the passport was however, directed to be taken by the Investigating Officer after one week vide order dated 13th June, 2011. Challenging the said order the Petitioner Kapil Sethi filed a Crl. Misc Case No. 2018/2011 before this Court seeking protection. This Court while disposing of the petition on 15th June, 2011

directed Kapil Sethi to join the investigation, deposit the passport with the CAW cell permitting him to get the visa stamped on the passport within seven days, directing him not to leave the country without the permission of the Court and in the event of arrest to be given a seven days notice. The said petition was disposed of with these directions with the consent of the parties.

4. On a notice of arrest being issued by the Investigating Officer the Petitioner applied for anticipatory bail. The learned Trial Court after observing the conduct of the Petitioner granted him interim anticipatory bail for a period of two months, with the directions that the passport of Kapil Sethi would remain with the Investigating Officer till further orders on 23rd July, 2011. Even the order dated 23rd July, 2011 passed by the learned Additional Sessions Judge granting protection for two months was challenged by the Petitioner Kapil Sethi in Crl. Misc. No. 2442/2011. The said petition was dismissed being devoid of merit, in view of the previous conduct of Kapil Sethi. The Petitioner then again approached the learned Metropolitan Magistrate seeking appropriate directions to visit USA, to resume his duties and for release of the passport. The learned Metropolitan Magistrate in view of the fact that the anticipatory bail application of the Petitioner had not been finally disposed of by the learned Additional Sessions Judge declined to grant permission to visit USA and resume the duties. The anticipatory bail

application of the Petitioner Kapil Sethi was heard and vide the impugned order dated 13th October, 2011 he was granted anticipatory bail and permission to travel to USA without the permission to the Court subject to the conditions.

5. The conditions imposed by the learned Additional Sessions Judge by the impugned order which are the bone of contentions in the present petitions are:

“In these circumstances, keeping in view the fact that the charge-sheet has yet not been filed and technically the investigation is still pending, the applicant is hereby admitted to anticipatory bail and it is ordered that in the event of his arrest, he be released on anticipatory bail on his furnishing a personal bond in the sum of Rs. 50,000/- with one surety in the like amount to the satisfaction of the IO/SHO concerned subject to further fulfillment of the following conditions by the applicant:-

1. That the applicant shall place on record an FDR in a sum of Rs.15 lacs in the name of Ld. District & Sessions Judge, Delhi which shall be subject to final outcome of the case qua claim of the complainant about her jewellery articles being in custody of the applicant.
2. That the applicant shall submit his permanent residential address of USA as well as the address of his employer on an affidavit before IO/Court.
3. That the applicant shall join the investigation as and when called by the IO.
4. That the applicant shall appear before the court concerned as and when called/directed.

5. That the applicant shall not travel to any other country except USA without permission of the Court.”

6. Learned counsel for the Petitioner contends that the condition of depositing the FDR in lieu of the Complainant’s claim qua streedhan is contrary to the law. Reliance in this regard is placed on *M. Sreenivasulu Reddy vs. State of T.N.*, 2002 (10) SCC 653; *Amarjit Singh vs. State (NCT of Delhi)*, 2002 (61) DRJ 670 (SC); *Sandeep Jain vs. National Capital territory of Delhi*, JT 2000 (1) SC 166; *Avinash Arora and others vs. State of U.T. Chandigarh and another*, JT 2000 (7) SC 501; *Ramatha and others vs. Inspector of Police and another*, 10 (2009) (3) Scale 550; *Munish Bhasin and other vs. State*, JT 2009 (3) SC 604 and *Rajesh Chander Bhardwaj vs. State*, 125 (2005) DLT 710 to contend that these conditions are onerous and should not be imposed while grant of anticipatory bail.

7. Learned counsel for the Petitioner admits that such a condition can be imposed for ensuring that the Petitioner does not flee from justice however, the condition cannot be imposed in lieu of return of streedhan as the proceedings under Sections 406/498A IPC are not recovery proceedings. During the course of the arguments, learned counsel for the Petitioner consented that he is willing to deposit a bank guarantee to the tune of Rs. 10 lakhs before the Registrar General of this Court in order to ensure that the

Petitioner Kapil Sethi will return to this country for attending the various proceedings.

8. Learned counsel further states that this Court in another matter i.e. *Sharad Kapoor through its POA vs. State, Bail Application No.423/2011* directed the Petitioner therein to leave the country on his furnishing a bank guarantee of Rs. 3 lakhs with the Registrar General of this Court which is a reasonable condition and thus claims parity. It is contended that the Petitioner has been continuously joining the investigation and since the charge sheet is likely to be shortly filed he is no more required for investigation, however, he would be available as and when required by the learned Trial Court.

9. Learned counsel for the Petitioner Komal Sethi is aggrieved by the blanket orders granted to the Petitioner Kapil Sethi for permitting him to go to USA even without the permission of the learned Trial Court though there is no grievance to the grant of anticipatory bail to the Petitioner Komal Sethi. Learned counsel vehemently contends that the Petitioner's conduct with the Complainant and also during the proceedings is such that it does not inspire confidence that he will not flee from justice and will be available for the trial. He states that besides the condition of depositing the FDR of Rs. 15 lakhs in lieu of the streedhan the Petitioner Kapil Sethi should be asked to furnish sufficient bank guarantee so that he returns to this country to attend the

various proceedings going on against him. It is stated that the Petitioner earns around \$ 1,00,000 per year and is not willing to pay any maintenance or return back the dowry and the sthreedhan articles of the Complainant. Kapil Sethi though took interim protection on the ground that he would like to settle the matter however, he never approached the mediation centre for settlement and thus his past conduct during the proceedings has been evasive and there is every possibility that after going back to USA, he will not come back and be available for trial.

10. I have heard learned counsel for the parties.

11. The Petitioner Kapil Sethi for the first time appeared before the Court on 2nd June, 2011 and though he stated that he would like to settle the matter but he did not approach any mediation centre for settlement. He has never made efforts to settle the matter with the Complainant. Thus, there is merit in the contention of the complainant Komal Sethi that the previous conduct of the Petitioner does not inspire confidence.

12. However, the core issues in the present case is whether by the impugned order the condition of deposit of Rs. 15 lakhs of a FDR could be imposed on the Petitioner Kapil Sethi and whether the Petitioner Kapil Sethi can be permitted to go to USA without being asked to furnish any bank guarantee.

13. In *M. Shreenivasulu Reddy* (Supra) relied upon by the Petitioner Kapil Sethi, the Hon'ble Supreme Court held that the Court while exercising jurisdiction under Section 438 Cr.P.C. must bear in mind and be satisfied that the accused will not abscond or otherwise misuse the liberty which can be ascertained by several factors like conduct of the accused in the past and his assets in the country and so on. While granting anticipatory bail though the Court may impose such conditions as it deems fit but the object of putting conditions should be to avoid the possibility of the person hampering the investigation. It was further held that discretion of the Court while imposing conditions should be an exercise of judicial discretion and in an offence under Section 409/420 IPC the Court will certainly not recover the alleged amount as a condition to grant of bail. In *Amarjit* (Surpa) their Lordships held that the imposition of the condition of deposit of a sum of Rs. 15 lakhs in the form of a FDR was an unreasonable condition and therefore, set aside the same. The said condition was a condition precedent for granting anticipatory bail.

14. The reliance of the Petitioner on the decision of this Court in *Sharad Kumar* (Surpa) is wholly misconceived. In the said case the jewellery of the Complainant was lying in the locker which locker had been directed to be opened and the Petitioner therein had no objection to the jewellery being given to the Complainant. The Petitioner therein after coming back to India

showed his bona fides. As held by the Hon'ble Supreme Court in *M. Shreenivasulu Reddy* (Supra) the conditions are to be imposed keeping in view the conduct of the parties and their assets left behind so as to ensure the presence. Thus the Petitioner cannot claim parity with another case as the facts of the two cases are not identical.

15. A perusal of the decisions relied upon by the learned counsel for the Petitioner Kapil Sethi show that the Court can impose any condition so as to ensure that the accused does not flee from justice and is available during the trial but cannot use the mechanism of anticipatory bail as recovery proceedings. In the present case, in my opinion the grievance of the both the Petitioners are justified. The impugned order directs submitting of Rs. 15 lakhs in the form of a FDR in lieu of the streedhan articles of the Petitioner Komal Sethi however, the Petitioner has been permitted to go to USA without any condition being imposed with the result that there is no condition to ensure his presence during trial. The past conduct of the Petitioner Kapil Sethi is not encouraging. Further it has not been stated that he has assets in his name in India.

16. Thus, in the interest of justice and in view of the law laid down by the Hon'ble Supreme Court, the order dated 13th October, 2011 is modified and it is directed that the Petitioner be admitted to anticipatory bail and in the event

of arrest he be released on anticipatory bail on his furnishing a personal bond in the sum of Rs. 50,000/- with one surety of the like amount to the satisfaction of the Investigating Officer/SHO concerned subject to the following conditions:

1. That the Petitioner Kapil Sethi is permitted to travel to USA and no other country subject to his furnishing a bank guarantee in the sum of Rs. 20 lakhs with the learned Trial Court within two weeks from today.
2. That the Petitioner Kapil Sethi shall submit his permanent address of USA as well as the address of his employer on an affidavit before the Investigating Officer/Court before leaving the country.
3. The Petitioner Kapil Sethi shall join the investigation as and when directed by the Investigating Officer; and
4. The Petitioner Kapil Sethi shall appear before the Court concerned as and when directed.

With these directions the petitions and the pending applications stand disposed of.

(MUKTA GUPTA)
JUDGE

NOVEMBER 08, 2011
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