

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M-11169 of 2015

Date of Decision : 09.04.2015

Smt. Mala Bhayana and others

.....Petitioners

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE R.P. NAGRATH

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

Present: Dr. Anmol Rattan Sidhu, Senior Advocate with
Mr. Saurav Khurana, Advocate
for the petitioners.

R.P. Nagrath, J.

Prayer in the instant petition is made for grant of pre-arrest bail under Section 438 Cr.P.C. in FIR No. 88 dated 23.03.2015 for offence under Sections 498-A, 323, 377 and 406 of Indian Penal Code (IPC) and Sections 3/4 of Dowry Prohibition Act, 1961, registered at Police Station Mahila Thana, District Ghaziabad.

Petitioners have approached this Court directly for grant of anticipatory bail. The marriage of petitioner no. 3 was solemnized with respondent no. 3 on 20.06.2014 at Chattarpur in New Delhi. The couple are doctors by profession. Petitioners no. 1 and 2 are the parents of petitioner no. 3.

Learned senior counsel for petitioners contended that FIR has been registered on false allegations. It was also the version

of petitioners that none of the cause of action arose within the district Ghaziabad where FIR was registered. That of course is not a question which should be dealt on the prayer for grant of anticipatory bail but in a petition for quashing of the FIR before the High Court within whose jurisdiction the district where FIR is registered falls.

Anyhow, there is allegation in the FIR that on *kirya* ceremony of grand-father-in-law, the in-laws of the complainant sent her to the parental home in Micca District Ghaziabad asking her to find out a job and she went with their consent on 13.08.2014 and joined a dental life clinic. It is further stated that on 16.08.2014, petitioners came to her house and that her mother-in-law started shouting at her as to why she joined the job and in fact they had demanded money for the car and MCH and not asked her to join a job.

Learned counsel for the petitioners stated that petitioners are residents of Hisar in the State of Haryana and they are apprehending their arrest in the said case and relied upon judgment of Delhi High Court in **Capt. Satish Kumar Sharma vs. Delhi Administration and others, 1991 Cri.L.J 950**. There is, however, a different view of Full Bench of Patna High Court in **Syed Zafrul Hassan and another vs. State, AIR 1986 Pat 194** taking a contrary view. The Full Bench of Patna High Court observed as under:-

“8. Adverting now to the language of Section 438 (and in particular in the light of the above), it deserves highlighting that both in Sub-section (1) and Sub-

section (2) thereof, the deliberate designed phraseology employed is "the High Court" or "the Court of Session". The section does not say "any High Court" or "any Court of Session". To accept the contention of the petitioners would, therefore, involve the substitution of the word 'the' for 'any' at all places where the phraseology of "the High Court" or "the Court of Session" has been employed. Not only would this be impermissible on the settled canons of construction, but, would be doing plain violence to the specific language of this section itself. To my mind, "the High Court" means the Court having jurisdiction over the area where the accusation of having committed a non-bailable offence is made. "The Court of Session" means that limited geographical area within whose limits such a non-bailable offence may have been committed and the accusation therefor arises. These limitations are inherent in the opening part of Section 438 itself. Indeed, this section does not talk of the High Court or the Court of Session in vacuum or in space but only in the context of and with regard to the commission of a non-bailable offence in the particularised geographical area. It is significant that Section 438 deals with somewhat serious crimes and does not extend to any or every offence but to

the commission of a non-bailable offence. The locale of such a crime is thus inextricably linked to the Court of Session or the High Court which exercises jurisdiction with regard thereto. Therefore, "the High Court" or "the Court of Session" in Section 438 means such a Court within whose territorial jurisdiction the accusation of having committed a non-bailable offence arises or is made. The apprehension of arrest by such accused is with regard to that particular offence having a particular locale and not generically. The clear mandate of the language of Section 438 and the inherent limitations of territorial jurisdiction cannot be overridden by any high-flown and doctrinaire considerations."

It was further held that slippery test of residence is an irrelevant in the context of anticipatory bail as well and the only fixed focal point is commission of the offence, which sounds criminal jurisprudence focuses on is the spot or the arena of the crime. The Patna High Court held that case against two petitioners was registered in Jhinkpani Police Station which falls in the district of Singhbhum falling within the jurisdiction of Ranchi Bench of the High Court. It was thus held that the petition for anticipatory bail falls before the Ranchi Bench and consequently dismissed the petition and the petitioners were relegated to seek their remedy in the appropriate forum of the Ranchi Bench, if so advised.

This Court followed the view of the Full Bench of Patna

High Court in **Harjit Singh vs. Union of India, 1995 (1) RCR (Criminal) 65** and disagreed with the opinion of the Delhi High Court in ***Capt. Satish Kumar Sharma's case (supra)***.

Learned counsel for the petitioners at the end, however, submitted that petitioners at least should be granted protection for a short while for enabling them to approach the appropriate court for the urgent relief. However, in view of what has been discussed above, I do not find the aforesaid plea should be accepted especially in view of the nature of offence.

The instant petition is, thus, dismissed and petitioners are relegated to their remedy before the competent court.

April 09, 2015
jk

(R.P. NAGRATH)
JUDGE