

In the High Court of Punjab and Haryana at Chandigarh

Crl. Misc. No. M-21560 of 2016 (O&M)
Date of Decision: 26.9.2016

Shilpa Arya

.....Petitioner

Versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Inderjeet Singh, Advocate
for the petitioner.

ANITA CHAUDHRY, J(ORAL)

CRM-22091-2016

Application is allowed and Annexures P-1 and P-2 are taken on record.

CRM-M-21560-2016

The petitioner is seeking cancellation of anticipatory allowed to respondent No. 2 by the Sessions Judge, Yamuna Nagar at Jagadhri in FIR No. 149 dated 27.4.2016 registered at Police Station Farakpur, District Yamuna Nagar under Sections 323, 354, 406, 498-A, 506 IPC.

Counsel for the petitioner contends that the istri dhan is owned by a married woman and refers to *Pratibha Rani versus Suraj Kumar and another 1985(1) R.C.R. (Criminal) 539*. Counsel further urges that the marriage gifts have to be restored to the wife and in this case bail had been allowed by the Sessions Judge. Counsel for the petitioner urges that since the dowry articles have not been returned and the Court below has ignored the gravity of the offence, bail should be cancelled. Reliance has been

placed upon ***Sudhir versus State of Maharashtra and another 2015(4) R.C.R. (Criminal) 649.***

The facts which appear from the record are that Shilpa and Karan were married in October 2015. There were allegations that the complainant was harassed, beaten and taunted for her physical attributes. The allegations against the father-in-law were that he entered her room under the influence of liquor without knocking the door and misbehaved with her. The complainant left the matrimonial home on 13.12.2015. The parents of the complainant along with the complainant's brother and the complainant went to the matrimonial home and the allegations are that the father-in-law pushed the complainant and she fell down and sustained injuries. She was not allowed to enter the house and thereafter the matter was reported to the police. The FIR was registered in April 2016. The Sessions Judge, Yamuna Nagar while allowing anticipatory bail to the husband, his parents and other relatives observed as under:-

“Heard. This is not the stage to delve into merits but, it can be made out that the prosecution version is bit exaggerated in as much as there is an allegation that immediately after the marriage, the complainant was not allowed entry in her matrimonial home on the ground that she had not brought a car (Honda City). Whether accused Ravinder Kumar could have tried to outrage the modesty of the complainant in the presence of her parents-in-law, who are his sister and brother-in-law respectively, while driving car is a point to be decided on evidence. Similarly, whether accused Randhir Singh entered the room of the complainant, without knocking, to

outrage her modesty, is a question of fact yet to be decided. Assuming that he did enter her room still, it is a question of law if it would constitute the offence of outraging her modesty. There are allegations and counter-allegations. The allegations levelled by the complainant's father with Dera Bassi police have been found to be wrong. Whether the allegations of dowry demand and resultant harassment are true or not, is again a question of fact but there is nothing to justify the arrest of the applicants either for proper investigation of the case or to prevent them for causing the evidence of the offence to disappear or tampering with such evidence. One of the grounds why the investigating agency wants to arrest the applicants is that the dowry articles are yet to be recovered. In view of the law laid down in Bhupinder Singh etc. vs. State of Punjab, 2\014(2) RCR (Criminal) 109, the provisions of sections 406 and 498-A of Indian Penal Code are not meant to be used to get the alleged dowry articles recovered. Needless to say that the applicants/accused are permanent residents of Hisar, Mohali and Panchkula respectively. They have root in society. The chances of their fleeing justice are quite remote. Most of the witnesses are related to the complainant, therefore, the chances of the applicants/accused's try to win them over are also negligible. In these circumstances, no justification for denying the benefit of bail in anticipation of arrest is made out. Hence, the applications are allowed and it is ordered that in the event of

arrest of applicants/accused Rashmi, Pardeep Kumar, Randhir Singh, Omwati and Ravinder Kumar, they shall be released on furnishing personal bonds in the sum of ₹ 20,000/- each with one surety each in the like amount to the satisfaction of arresting officer/Illaq Magistrate. However, they shall join investigation as and when required by the investigating agency; they shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts and they shall not leave India without prior permission of the court. Copy of this order be placed on the files of connected bail applications bearing No. 626 and 627 of 2016 titled 'Randhir Singh etc. vs. State of Haryana' and 'Ravinder Kumar vs. State of Haryana' respectively. File be consigned to the record room after due complainece."

It is necessary to refer to two decisions of the Supreme Court i.e ***Delhi Administration Vs. Sanjay Gandhi AIR 1978 SC 961 and Raghbir and another Vs. State of Bihar AIR 1987 SC 149***, which deals with the grounds on which bail can be cancelled under Section 439(3) Cr. P. C. In Sanjay Gandhi's (supra) case it was held that rejection of bail is one thing and cancellation of bail already granted is quite another.

Cancellation of bail necessarily involves review of a decision already made and can be permitted only if by reasons of supervening circumstances, it would be no longer conducive to a fair trial to allow the accused to retain his freedom during trial.

In ***Raghbir Singh's*** case (supra) it was held that the grounds for cancellation under Section 437(5) and 439(2) are identical, namely, bail

granted under Section 437(1) or (2) or Section 439(1) can be cancelled where: (i) the accused misuses his liberty by indulging in similar criminal activity, (ii) interferes with the course of investigation, (iii) attempts to tamper with evidence or witnesses, (iv) threatens witnesses or indulges in similar activities which would hamper smooth investigation, (v) attempts to make himself scarce by going underground or becoming unavailable to the investigating agency and (vii) attempts to place himself beyond the reach of his surety, etc. It was held that rejection of bail stood on one footing but cancellation of bail was a harsh order as it interfered with liberty of the individual and could not be lightly resorted to.

Nothing has been placed on record to suggest that the accused had not cooperated with the investigation or had hampered it in any way.

In my opinion, non recovery of the articles is not a valid ground for cancellation of bail. It is a matter of trial and it will have to be proved as to how much dowry was given and in whose custody the same were. The petition is dismissed as not maintainable.

(ANITA CHAUDHRY)
JUDGE

September 26, 2016
Gurpreet

Whether speaking/reasoned	:	Yes
Whether reportable	:	No