

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Judgment delivered on : September 16, 2016

+ BAIL APPLN. 1731/2016
SAURABH SHARMA Petitioner
Through: Mr.Maninder Singh, Ms.Aekta Vats,
Mr.Sankalp Kohli, Ms. Smriti Asmita,
Mr.Rohit Arora, Mr.Vivek
Chaudhary, Advocates.

versus

STATE Respondent
Through: Mr. Amit Chadha, Additional Public
Prosecutor for the State

CORAM:
HON'BLE MR. JUSTICE P.S.TEJI
JUDGMENT

P.S.TEJI, J.

1. By this petition filed under Section 438 of Cr. P.C., the petitioner seeks anticipatory bail in a case registered as FIR No. 511/2015 under Section 498-A/406/34 of Indian Penal Code, at Police Station Paschim Vihar, Delhi.

2. The prosecution case is based on the complaint filed by Mrs. Meenakshi Sharma who was married to the petitioner on 19.04.2015 as per Hindu Rites and Ceremonies. The complainant, in her statement stated that the dowry articles i.e. entire household goods, articles, jewelery, cash and Wagon R Car was given in her marriage to her in-laws but after marriage her husband, mother-in-law, father-in-law, and

sister-in-law started harassing and torturing her physically and mentally for bringing less dowry. It is further alleged that on 22.04.2015, i.e. just after few days, her husband, mother-in-law, father-in-law, brother-in-law and sister-in-law came in her room and asked her to handover jewellery articles, which were received from both sides, for the purpose of keeping it in safe custody of bank locker. It is alleged that on repeated requests and demands, they did not return the same despite the complaints. It is further stated that the husband of the complainant had sold the Wagon R Car without her consent and forced her to sign on some other papers against her will. In this regard another FIR No.364/15 under Section 406/468/471 of IPC dated 30.04.2015 was also registered against the petitioner herein.

3. Investigation of the case was started and statement of witnesses were recorded, evidence was collected and after obtaining permission from competent authority efforts to arrest the petitioner were made but he could not be arrested. He also moved an application before the court of learned ASJ, which was dismissed vide order dated 05.01.2016. In the meanwhile, the petitioner also preferred bail application before the High Court in which this court had passed an order to the effect that subject to petitioner joining the investigation, no coercive steps be taken against him. However, the same was later on withdrawn on behalf of the petitioner, as he was arrested in another case of cheating, lodged by the complainant herein. The petitioner remained behind bars for nine days and now he is released on regular bail in other case.

4. Thereafter, the petitioner moved anticipatory bail in the present case before the court of learned ASJ, which was dismissed vide order dated 28.07.2016 on the ground that despite the dismissal of his first application on 05.01.2016, he has still not joined the investigation and recovery of istridhan articles is yet to be effected. Now the petitioner has moved the instant application before this court.

5. Learned counsel for the petitioner contended that the complainant left her matrimonial home on 10.07.2014 without any rhyme or reason. Various efforts for amicable settlement of matrimonial misunderstandings were made, but she did not return back to her matrimonial home. It is contended that the complainant had filed the complaint which was registered vide FIR No.511/15 under Section 498A/406/34 of IPC and thereafter another FIR No.364/15 under Section 468/471/406 of IPC, Police Station Dwarka was registered against the petitioner.

6. Learned counsel for the petitioner further contended that after dismissal of the bail application by the learned Additional Session Judge vide order dated 05.01.2016, the petitioner moved the bail application No.136/2016 before this court which granted interim protection to the petitioner and also directed the petitioner to join the investigation as well as mediation proceedings in order to reach an amicable settlement between the parties. The petitioner had joined the investigation in compliance of the order of this Court but he was arrested from the court premises in another FIR No.364/15 under

section 468/471/406 of IPC, Police Station Dwarka, in which he was enlarged on regular bail vide order dated 25.05.2016. The petitioner also remained behind bars for 9 days.

7. Learned Additional Public Prosecutor for the State opposed the contentions raised on behalf of the petitioner and submitted that the petitioner had not disclosed the fact of his filing the bail application before the trial court, in this case, which was dismissed on 05.01.2016 and the bail application filed before this court was withdrawn by the petitioner vide order dated 28.07.2016. Though, the petitioner had submitted before the learned Additional Sessions Judge that the statement of withdrawal made before the High Court in the bail application is factually incorrect, but the order dated 28.07.2016 clearly reflects that the learned counsel for the petitioner submitted before the court that the petitioner has already been arrested and is behind bars and that application was filed for grant of anticipatory bail, therefore, he wished to withdraw the same.

8. I have heard the submissions made on behalf of the petitioner as well as the learned Additional Public Prosecutor for the State and also gone through the material placed on record.

9. For granting anticipatory bail to the person against whom serious allegations have been leveled, this court is of the considered opinion that while considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to free, fair and full investigation, and there should

be prevention of harassment, humiliation and unjustified detention of the accused and the Court should consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant and unless there are peculiar and special facts and circumstances in a given case, the Court would not be justified in extending the benefit of anticipatory bail to such a person.

10. In view of the aforesaid settled principles and considering the facts and circumstances of the present case and the fact that though the petitioner had joined the investigation in this case, but as per status report filed on behalf of the State, the petitioner did not cooperate the investigation. The petitioner also did not inform the learned Additional Session Judge that he had also filed bail application seeking similar relief and the same was dismissed vide order dated 05.01.2016. Apart from the said fact, this court further notes that the istridhan articles are still to be recovered from the petitioner. Therefore, this Court is not inclined to grant anticipatory bail to the petitioner in this case.

11. Resultantly, in the considered opinion of this Court, the facts emerging from the record culminate into dismissal of the present bail application. Accordingly, the present bail application filed by the petitioner is dismissed.

12. Before parting with the order, this Court would like to place it on record by way of abundant caution that whatever has been stated hereinabove in this order has been so said only for the purpose of disposing of the prayer for anticipatory bail made by the petitioner.

Nothing contained in this order shall be construed as expression of a final opinion on any of the issues of fact or law arising for decision in the case which shall naturally have to be done by the Trial Court seized of the trial.

13. With aforesaid direction, the present bail application, filed by the petitioner stand disposed of.

SEPTEMBER 16, 2016
pkb

(P.S.TEJI)
JUDGE

