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

+ **BAIL APPLN. 2169/2015**

NASEEM AHMED

..... Petitioner

Through: **Mr.Arjun Mahajan and Mr.Rohan
Sharma, Advocates.**

versus

STATE OF NCT OF DELHI

..... Respondent

Through: **Ms.Alpana Pandey, APP for the State
with SI Pankaj Kumar, PS Bara
Hindu Rao.
Mr.Netra Pal Singh, Advocate for the
complainant with complainant in
person.**

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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15.01.2016

1. By filing the present application under Section 438 Cr.P.C. the petitioner is seeking anticipatory bail in case FIR No.35/2015 under Section 498-A/34 IPC, PS Bara Hindu Rao, Delhi.
2. I have heard learned counsel for the parties and carefully gone through the record.
3. It is a matrimonial dispute. The learned ASJ has recorded in the proceedings dated 29.09.2015 that the entire stridhan of the complainant has been returned by the petitioner but subsequently on 30.09.2015 the prayer

of the petitioner for grant of anticipatory bail has been rejected observing as under:-

‘As per the allegations of the prosecution, it is alleged by the complainant that her husband i.e. the applicant/accused, her father-in-law and two sisters-in-law used to harass and beat her for bringing insufficient dowry. It is further alleged that complainant was also subjected to cruelty to bring more dowry. The applicant/accused had beaten the complainant on many occasions to bring cash of ₹5 lacs in lieu of car which was promised by the parents of the complainant.

Considering the fact that there are specific allegations of cruelty against the applicant/accused, coupled with the fact that the applicant/accused has misled the Court, I do not find any ground for grant of anticipatory bail and same is accordingly dismissed.’

4. Thereafter the petitioner has approached this Court for grant of anticipatory bail.
5. The complainant is present in person and submits that though stridhan has been returned to her but she is opposing the prayer made by the petitioner for grant of anticipatory bail on the ground that she was given beating by the petitioner/husband.
6. On being asked about her medical examination, if any, the complainant submits that at no point of time, she has undergone any medical examination in respect of the injuries caused due to the beatings given by the petitioner to her.
7. The FIR in this case has been registered under Section 498-A/34 IPC. In the decision reported as **Arnesh Kumar vs. State of Bihar & Anr. AIR 2014 SC 2756**, directions have been given by the Hon’ble Supreme Court to the Police not to arrest the accused persons unnecessarily as well as to the

Magistrate not to authorize the detention casually and mechanically. The directions given by the Apex Court are as under:-

“ Our endeavour in this judgment is to ensure that police officers do not arrest accused unnecessarily and Magistrate do not authorise detention casually and mechanically. In order to ensure what we have observed, we give the following direction:

- (1) All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A of the IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41 Cr.P.C.;*
- (2) All police officers be provided with a check list containing specified sub-clauses under Section 41 (1) (b) (ii);*
- (3) The police officer shall forward the check list duly filed and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention;*
- (4) The Magistrate while authorising detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorise detention;*
- (5) The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of Police of the district for the reasons to be recorded in writing;*
- (6) Notice of appearance in terms of Section 41A of Cr.P.C. be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the District for the reasons to be recorded in writing;*
- (7) Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before High Court having territorial jurisdiction.*
- (8) Authorising detention without recording reasons as aforesaid by the judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.*

8. In the instant case, there are allegations against the petitioner and his family members about the complainant being treated with cruelty for not bringing car and bringing only a cheap motorcycle, she being taunted by the petitioner and his sisters on routine basis and also not treating her with respect.

9. Considering the allegations made against the present petitioner and that he is not required for custodial interrogation, it is directed that in the event of arrest of the Petitioner, he shall be released on bail, subject to his furnishing a personal bond in the sum of Rs.50,000/- with one surety of the like amount to the satisfaction of the IO/SHO concerned. However, he shall join the investigation as and when required to do so and shall not misuse the liberty of bail granted to him in any manner whatsoever.

10. Application stands disposed of.

As prayed, copy of this order be given *dasti* to learned counsel for the parties.

PRATIBHA RANI, J.

JANUARY 15, 2016

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