

CRM-M- 26547 of 2016 (O&M)

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In the High Court of Punjab and Haryana at Chandigarh

**CRM-M- 26547 of 2016(O&M)
Date of Decision:23.3.2017**

Raman Abott and others

---Petitioners

vs.

State of Haryana and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr.Sunil Panwar, Senior Advocate
with Mr. Naren Partap Singh, Advocate
for the petitioners

Mr. Vikas Malik, DAG, Haryana

Mr. J.S.Bedi, Senior Advocate
with Mr. Vineet Sehgal, Advocate
for the complainant

Rekha Mittal, J.

The petitioners pray for grant of bail in anticipation of arrest in FIR No. 27 dated 7.4.2016 for offence under Sections 323, 354, 377, 406, 498-A, 506 read with Section 34 of the Indian Penal Code (in short “IPC”) (offence under Section 328 IPC added later) registered at police station, Women Police Station, Yamunanagar, District Yamunanagar Haryana.

Counsel for the petitioners has submitted that marriage of Karan Abbot petitioner No. 3 son of Raman Abbot and Shikha Abbot

petitioner Nos. 1 and 2 was performed with the complainant on 29.11.2010 at Yamunanagar. Out of the wedlock, a daughter was born on 15.1.2012. It is argued that the complainant left the matrimonial home on 10.8.2015 but the first complaint was made in February 2016(Annexure P-1) wherein the complainant has not levelled any allegations under Sections 354, 377 and 328 IPC. It is vehemently argued that as the complainant later tried to indict the petitioners for offence under Section 328 IPC, offence under Section 354 IPC against father in law and Section 377 IPC against husband, it is sufficient to show that the complainant improved upon her first version in order to aggravate culpability of the petitioners so that they may not be enlarged on bail.

With regard to the allegation constituting offence under Section 498-A IPC, the complaint (Annexure P-1) makes reference to first incident in September 2011 in regard whereof, the complainant was taken to Mayom Hospital, Gurgaon. With regard to incident of July 2012, complainant, in reply, has placed on record the photographs alongwith medical prescriptions but the photographs do not represent the correct picture and have been manipulated to portray that she received serious injuries on her eyes and face due to fist blows given by her husband. Further dilating, it is argued that after the alleged occurrence of July 2012, Karan Abbot petitioner No. 3 submitted application dated 16.10.2012 to the Incharge, Police Post, Sector 15, P.S.Central, Faridabad (Annexure P-2) complaining against high handedness by his in laws family. In addition, it is argued that the complainant did not receive any treatment with regard to her alleged condition from any hospital at Faridabad but she manipulated the medical

records prepared by doctor at Yamunanagar. Regarding offence under Section 328 IPC, it is argued that the chemical examiner's report is negative and offence under Section 328 IPC has been deleted.

Counsel has submitted that Subodh Parkash, father of the complainant submitted a list dated 10.8.2015 with regard to jewellery already recovered. The said list (Annexure P-3) also makes reference to recovery of passport and certificates. It is vehemently argued that entire jewellery belonging to the complainant is already in her possession, therefore, custodial interrogation of the petitioners is not required for recovery of articles of stridhan. Counsel would further submit that in case this court arrives at a conclusion that any article of stridhan belonging to the complainant still remains to be recovered, the petitioners are ready to pay a reasonable amount as compensation but subject to outcome of the litigation. In the alternative, it is submitted that non-recovery of dowry articles cannot constitute a valid ground to deny benefit of pre arrest bail. In this context, reference has been made to judgment of this Court ***Prit Pal Singh vs. State of Punjab and another 2014(5) RCR (Criminal) 771.***

Counsel for the complainant, Sh. J.S.Bedi, Senior Advocate has opposed prayer of the petitioners with the submission that the complainant was harassed, tortured physically and mentally in connection with demand of dowry. It is argued that the petitioners persisted with their demand of Rs. 2 crores due to which the complainant had to suffer a lot, proved by photographs annexures R-2/1 and medical records. Further argued that the complainant was administered something poisonous but as there was delay in analysis of samples sent to the laboratory, report in the negative cannot

enure to benefit of the petitioners.

Another submission made by counsel is that though certain jewellery articles, detailed in list dated 10.8.2015 were recovered but balance items of stridhan as well as various articles of gifts, detailed in the list (annexure R-2/4) of the value of Rs. 1,58,24,000/- are yet to be recovered requiring custodial interrogation of the petitioners. Further argued that subsequent conduct of the petitioners and their family members disentitle them to concession of pre arrest bail. To bring home his contention, counsel has pointed out that when the petitioners and younger brother of Karan Abbot came to police station, Yamunanagar in connection with the case, he (Kunal Abbot) molested Aastha, the complainant and in this regard, FIR No. 0034 dated 20.5.2016 for offence under Sections 354 and 506 IPC was registered against him. During course of investigation of the present FIR against the petitioners, police officials of district Yamunanagar and Faridabad, the complainant and her family members had gone to house of the petitioners for effecting recovery of stridhan but the petitioners and Kunal Abbot, misconducted and created hindrance in discharge of official duty by the police which led to registration of FIR No. 0408 dated 1.7.2016 for offence under Sections 353, 186 read with Section 34 IPC (Annexure R-2/9).

Counsel for the State has endorsed the arguments advanced by counsel for the complainant and further submitted that recovery worth Rs. 1,58,00,000/- is yet to be effected, therefore, custodial interrogation of the petitioners is necessary for progress in investigation.

I have heard counsel for the parties, perused the paper book and

the police records.

Before advertizing to the submissions made by counsel for the parties, it is appropriate to take note of the fact that counsel for the petitioners gave an impression to the Court that the petitioners are still ready to rehabilitate the complainant in the matrimonial home and they are not even averse to the idea that the complainant and her husband reside separately. He has further submitted that the petitioners are also ready for a settlement on payment of reasonable amount towards permanent alimony and maintenance etc. I would hasten to add that the parties were referred to the Mediation and Conciliation Centre of this Court to explore possibility of an amicable settlement but the proceedings turned out to be unsuccessful.

There is no denial that in the first complaint made by complainant Aastha, after about six months of leaving the matrimonial home, no reference to allegations constituting offence under Sections 328, 354, 377 IPC has been made. The complaint makes specific reference to three incidents of September 2011, July 2012 and August 2015. With regard to episode of September 2011, complainant got treatment from Mayom Hospital, Gurgaon and the relevant document is Annexure R-2/6. As per medical prescription, complainant suffered facial palsy and was advised MRI Brain T₁ and T₂ images. Counsel for the complainant has failed to refer to any medical text that facial palsy can be the result of physical assault. As per medical text, 'Facial palsy' is weakness of the facial muscles, mainly resulting from temporary or permanent damage to the facial nerve. This apart, there is no reference to any injury on any part of the complainant, in the medical records.

Much stress has been laid by the complainant in regard to injuries due

to fist and kick blows given by the husband on 17.7.2012. If we look at the photographs (Annexure R-2/1) at the first glance, an impression would be created that the complainant was severely hit on her face. The first complaint with regard to occurrence of July 2012 was made in February 2016, about six months after complainant left the matrimonial home on 10.8.2015. Undenyingly, neither the complainant got any treatment at Faridabad nor she or her father lodged any complaint with the police at Faridabad with regard to condition of the victim. This apart, as per reply of the complainant, with regard to injuries sustained in July 2012, she got treatment from Dr. B.R.Kalra, Eye and General Hospital and Garg ENT, Hospital, Yamunanagar vide Annexure R-2/2. On the contrary, as per allegations raised in the complaint (Annexure P-1) she got herself checked from Dr. Mehta and her X-ray, ultra sound etc. was done and she was given treatment, copy whereof, is stated to be attached with the complaint. In the complaint, there is no reference to Dr. B.R.Kalra and Garg ENT Hospital.

As has been noticed hereinbefore, there is no reference to the allegations constituting offence under Section 328 IPC in the first version given vide annexure P-1. The medical record appended with the reply Annexure R-2/8 does not make reference that the complainant complained of anything being administered to her. There is reference that the patient refused for admission. Concededly, report of the chemical examiner is negative and offence under Section 328 IPC has been deleted.

This brings the court to plea of the complainant and the State with regard to custodial interrogation for effecting recovery of articles worth Rs. 1,58,24,000/-, detailed in annexure R-2/4. On the first page of the list, there is mention of gifts given to family members of the bridegroom,

thus would not constitute stridhan of the complainant. One of the major items in the list is the expense of Rs. 80,00,000/- on tenting, catering and hotel expenses etc. at the time of function which again can not be part of stridhan. Many other articles in the list are gifts given on different occasions. It is a disputed question if the articles stated to be of the complainant are still in possession of the petitioners particularly in the circumstances that as many as 26 articles of gold and diamond have already been recovered. Even otherwise, the petitioners are ready to compensate the complainant for disputed jewellery items though subject to outcome of the litigation. Examined from another angle, this Court in **Prit Pal Singh's case (supra)** while referring to various judgments on the issue in paras 9 to 14 has held that anticipatory bail cannot be denied only on the ground that jewellery and dowry articles were not recovered. Counsel for the complainant has failed to cite any contrary judgment.

Counsel for the complainant has tried to draw some mileage from illegal conduct of the petitioners subsequent to lodging of FIR. Firstly, FIR No. 0034 dated 20.5.2016 has been registered against younger brother of the husband who is not accused in the present case. The allegations against Kunal Abbot are that in the police station at Yamunamagar, he put his hand under her (Aastha's) shirt with an intention to insult her. Indisputably, Kunal Abbot has filed an application for grant of pre arrest bail and he has been allowed interim bail by the Court. In the background that the complainant has a serious grievance to express against her husband and his family members, FIR against Kunal Abbot does not invite serious consideration at this stage for denying pre arrest bail to the

petitioners. Another FIR has been lodged against the petitioners and Kunal Abbot for offence under Sections 186, 353 read with Section 34 IPC. Perusal of the FIR (Annexure R-2/9) would indicate that there is no serious allegation against the petitioners. It appears that there was some argument as family of the petitioners raised some issue against entry of certain persons accompanying the complainant in their house when the police and others visited their house on 1.7.2016.

The petitioners have already joined investigation in compliance with interim bail granted by this Court. In view of discussion made hereinbefore, there is no reason to deny them benefit of pre arrest bail. That being so, interim bail granted to the petitioners is made absolute subject, however, to the following conditions:-

- (i) They shall join the investigation as and when required by the Investigating Officer.
- (ii) They shall not offer any threat, promise or inducement to any person acquainted with the facts of the case so as to dissuade him from disclosing the same to the Investigating Officer/Court; and
- (iii) They shall not leave the limits of this country without prior permission of the Court.
- (iv) They shall pay an amount of Rs. 15 lakhs by way of demand draft to the complainant in regard to price of balance jewellery claimed by her but the payment would be subject to outcome of the litigation. The demand draft would be prepared in the name of the complainant and handed over to the Investigating Officer within 15 days.

It is clarified that this Court has adverted to various contentions raised by counsel for the parties so that an impression may not be carried

that the court has disposed of the petition without addressing the issues raised. I am well alive that at the time of deciding an application for bail (pre arrest or regular), the court should refrain from touching merits of the case lest it may cause prejudice to either of the parties during trial. Any observations made by the Court would be confined to disposal of the plea for pre arrest bail and would not be construed as an expression on merits of the case by the trial court.

Failure of the petitioners to comply with the condition of payment of Rs. 15 lakhs to the complainant within the stipulated period would entail dismissal of the petition.

(Rekha Mittal)
Judge

23.3.2017
paramjit

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No