

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CRM No. M-8461 of 2017 (O&M)
Date of Decision: 14.03.2017**

Rekha Vimal

--Petitioner

Versus

State of Haryana & another

--Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. R.N. Maurya, Advocate for the petitioner.

TEJINDER SINGH DHINDSA, J.

The instant petition has been filed under Section 439(2) Cr.P.C. seeking cancellation of the concession of anticipatory bail granted to private respondent No.2, namely, Rekha Rathore wife of Anil Kumar Rathore vide order dated 08.11.2016 (Annexure P-3) passed by the learned Additional Sessions Judge, Gurgaon. Petitioner further assails an order dated 31.01.2017 (Annexure P-9), whereby an application moved by the petitioner seeking cancellation of bail has been declined.

Counsel for the petitioner has been heard at length and pleadings on record have been perused.

Perusal of the FIR in question and placed on record at Annexure P-1 would reveal that the same came to be registered on the complaint of Rekha Vimal i.e. the present petitioner. Allegations in the FIR are primarily against Shishir Kumar i.e. brother of the deceased husband of the complainant and Anil Rathore. It is alleged that husband of the complainant fell terminally ill on 30.06.2004 and expired on 18.01.2005.

Prior to falling ill, husband of the complainant had purchased a plot admeasuring 115 sq. yards in Palam Vihar Extension, Gurgaon and had constructed a small dwelling unit thereupon. On 19.01.2005, immediately after demise of her husband, complainant is stated to have proceeded to Bihar to perform the last rites and in her absence, Shishir Kumar, co-accused i.e. brother of the deceased husband of the complainant taking undue advantage and with an ulterior motive to grab the property took over possession as also misappropriated the valuables that were lying inside the house. Further allegation is that Shishir Kumar in collusion and in connivance with Anil Rathore had prepared forged and fabricated documents pertaining to the house. Complainant further alleged that on 11.03.2015, when she returned from Bihar, she discovered to her shock and horror that the house stands illegally occupied by Anil Rathore. Yet another allegation raised is that Anil Rathore got the complainant/present petitioner falsely implicated in FIR No.137, dated 11.03.2015.

The application moved by respondent No.2 under Section 438 Cr.P.C. seeking concession of anticipatory bail was allowed by the learned Additional Sessions Judge, Gurgaon vide order dated 08.11.2016 and by adopting the following reasoning:

“Admittedly Rekha Rathore wife of Anil Rathore is living in the house alongwith her husband. If grabbing of the property by the complainant that has been done by Shishir Kumar and Anil Rathore and Rekha Rathore wife of Anil Rathore is living in the house because she had to go with her husband. Assuming without admitting that she stood by her husband in assaulting and humiliating the complainant. When complainant

questioned them about their capacity with regard to occupation of her house. The wife would always stand by her husband. The complainant has not shown any injury which is caused to complainant by Rekha Rathore. Practically it would be a futile exercise to deny the concession of anticipatory bail to the wife of accused because her role is to such as that of her husband Anil Rathore in grabbing the plot of the complainant by colluding with her brother in law. Therefore accused Rekha Rathore shall stand admitted to anticipatory bail on her furnishing bail bonds in the sum of Rs.50,000/- with one surety in the like amount to the satisfaction of arresting officer/illaqua Magistrate subject to the conditions as are enumerated under Section 438(2) of the Code of Criminal Procedure.”

During the course of arguments, it has gone uncontroverted that Both Shishir Kumar and Anil Rathore have been declined the concession of pre-arrest bail and they have since been arrested. It is also the conceded position of fact that after grant of anticipatory bail, the present petitioner has joined investigation. It is not even the case made out on behalf of the petitioner that respondent No.2 has in any manner misused the concession of anticipatory bail.

From a bare reading of the FIR, the only allegation emanating against respondent No.2 is that on 11.03.2015, the complainant had been physically assaulted not only by respondent No.2 but also by Anil Rathore and his son. On a specific query having been put to the counsel, it has been conceded that there is no medical evidence to corroborate such occurrence which allegedly took place on 11.03.2015.

In view of the discussion above, no ground is made out to accept the prayer made in the instant petition seeking cancellation of

concession of pre-arrest bail granted in favour of respondent No.2.

No merit. Dismissed.

14.03.2017

harjeet

(TEJINDER SINGH DHINDSA)
JUDGE

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| i) | Whether speaking/reasoned? | Yes |
| ii) | Whether reportable? | Yes |