

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

Crl. Misc. M 18962 of 2016 (O&M)

Date of decision: 13.7.2018

Bakhtawar Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. APS Deol, Senior Advocate with
Mr. Himmat Singh, Advocate,
for the petitioner.

Mr. V.G. Jauhar, Sr. DAG, Punjab.

Mr. M.L.Saggar, Senior Advocate with
Mr J.S. Dhaliwal, Advocate,
for the complainant.

JAISHREE THAKUR, J.

1. The petitioner herein seeks anticipatory bail under Sections 438 of the Code of Criminal Procedure in FIR No. 42 dated 29.4.2016 under Sections 498A, 406, 506, 342, 323, 354, 34 IPC registered at Police Station Sirhind District Fatehgarh Sahib.

2. In brief, the facts are that petitioner and complainant Hargeet Kaur solemnized their marriage in the year 2002 when she was only 19 years of age at that time. It is alleged in the F.I.R that the marriage was solemnized at Ludhiana with the consent of both the parties, according to Hindu Sikh ceremony and thereafter they left for Amritsar, out of which wedlock one child namely, Udaiveer Singh was born on 18.8.2006. It was

submitted that at the time of wedding, expensive meals were provided by the parents of the complainant to approximately 900 persons and approximately an amount of ₹6,26,1200/- was spent on the marriage. Initially, the relationship remained cordial between them. However, this did not last very long and there was a gradual change in the behaviour of the husband and his parents towards the complainant. She was taunted for not bringing adequate dowry items and also taunted for not bringing a car in the dowry. It was also alleged that false information had been given about the character of her husband and it had been concealed that he had been convicted for 15 days in jail, while also misrepresenting that he was earning ₹5 lakhs per month from a business of Gym. The complainant also alleged that there was a demand for dowry from her parents, while also alleging that there was physical abuse in the relationship. An effort was made by the family members to resolve the dispute that had arisen between the complainant and her husband, and the complainant was shifted to a separate house, however, there was no such reconciliation that took place. Ultimately, the dispute escalated to such an extent that the complainant started suffering from depression and eventually was thrown out of her matrimonial home. A FIR came to be registered on 29.4.2016. It is in these proceedings that the petitioner has filed for grant of anticipatory bail after his application was rejected by Additional Sessions Judge, Fatehgarh Sahib, which has led to the filing of the instant petition.

3. Mr. A.P.S. Deol, Senior Counsel, assisted by Mr. Himmat Singh, Advocate, appearing on behalf of the petitioner—husband, submits that after the marriage was solemnized in the year 2002, it is the petitioner and his family members who encouraged the complainant to complete her

education and provided all facilities for her to do so. She graduated in the year 2006 from Punjab University. She was given all opportunities by the petitioner to be financially independent and invested a huge sum of money by opening a gym in the name of **Femina fitness** in the city of Amritsar . It is argued that in this regard, a newspaper item dated 08.03.2011 was carried in Hindustan Times on Women's Day projecting the complainant as owner of a girls gym. Learned Senior Counsel also submits that the petitioner herein has taken his family abroad for holidays that is to Singapore, Hong Kong, USA. It is thereafter that the complainant started insisting for change in residence either to relocate to a foreign country or Chandigarh. However, since the petitioner was the eldest son of his parents and his younger brother was physically handicapped, he was not in a position to shift out. It is also submitted that the complainant left the matrimonial home in November 2011 and shifted to her parental home at Sirhind, leaving her minor child behind in the custody of the petitioner. The complainant returned to her matrimonial home and, thereafter, the petitioner in order to save his married life shifted to a new residence after constructing a new house. It is only on 20th of August 2015 that the complainant left her matrimonial home, after 13 years of marriage life, after celebrating the birthday of the minor child, along with all jewellery articles. The petitioner herein was constrained to file a petition under Section 13 of the Hindu Marriage Act for dissolution of marriage. It is thereafter that a complaint was instituted by the complainant before SSP Fatehgarh Sahib through her mother—GPA/Special Power of Attorney holder, on 29.10.2015. This complaint was forwarded to Women Cell Fatehgarh Sahib which was investigated and no action were taken thereon.

The complainant, who had gone abroad, returned from USA and filed an application under Section 156 (3) of the Code of Criminal Procedure on 09.12.2015 with similar allegations and an inquiry was conducted by SHO, Police Station Sirhind, who came to the conclusion that it was a simple marriage by exchange of garlands and there was no evidence with regard to demand or giving of any dowry articles nor any evidence in the form of bills could be produced by the girls side in support of the allegations. The Magistrate on going through the inquiry report and ignoring the conclusion, ordered registration of the aforesaid FIR. Learned Senior Counsel for the petitioner prays for grant of anticipatory bail contending that there was no complaint made either by the complainant or her parents about any ill-treatment meted out to her before 2015 when a complaint was made to the Magistrate under section 156 (3) of the Code of Criminal Procedure.

4. Per contra, Mr. M.L. Saggar, learned Senior Counsel, assisted by Mr. J.S. Dhaliwal, Advocate, appearing on behalf of the complainant argues that the allegations as set out in the F.I.R are sufficient to deny the anticipatory bail to the petitioner herein. Custodial interrogation is required in the instant case, so that recoveries of the dowry and gold items, which are still in the possession of the husband, could be recovered. It is contended that a vast amount of money was spent on the marriage in the year 2002 and despite the said lavish wedding, the complainant was harassed and subjected to physical abuse on account of inadequate dowry. Learned counsel for the complainant also relies upon photographs to establish the fact that adequate jewellery had been given at the time of marriage.

5. I have heard the counsel for the parties and have also perused

the pleadings of the case.

6. At the very outset, it is noted that the petitioner herein had been allowed anticipatory bail by this Court on 27.05.2016 and he was asked to join investigation. Subsequent to the said order passed, the parties were referred to the Mediation and Conciliation Centre of this court to explore the possibility of an amicable settlement between them. The parties were referred by order dated 17.4.2017 to appear before the Mediator, however, the mediation process failed. In court, the petitioner herein made an offer of giving two plots to the complainant as full and final settlement. It was contended that the properties are highly valuable and certainly valued at more than 70 lakhs. This offer came to be rejected on the ground that out of the 2 plots that were being offered, one plot already stood registered in her name, whereas in the 2nd plot she is a shareholder along with the mother-in-law. To this submission, it was submitted that plots were purchased by the petitioner in the name of the complainant wife during the subsistence of the marriage. It was further submitted that the complainant did not have any independent source of funds to have purchased the plots.

7. Admittedly, the marriage solemnized between the parties in the year 2002 has soured which led to the registration of a FIR. Allegations have been made in the F.I.R regarding demand of dowry and ill-treatment at the hands of the petitioner herein and learned Senior Counsel for the complainant by affidavit dated 13th of July 2018, which has been taken on the record, seeks to rely upon certain photographs to establish that dowry articles had been given at the time of the marriage, that the locker had been operated by the husband in the absence of the wife and that she had to

undergo medical treatment on account of the behaviour of the husband. Reliance is also being sought to be placed on photographs showing the husband enjoying his life and spending lavishly.

8. The mediation as tried by the court has also failed and, therefore, it is now a question whether the petitioner herein is entitled to grant of anticipatory bail or whether his custodial interrogation is required.

9. Allegations and counter allegations have been made in the pleadings before this court and reliance has been placed on photographs as well as other documents. There is also an inquiry report available on the record which is to the effect that there is no demand of dowry. The question raised is, whether custodial interrogation is required, since there is no return of the gold articles/dowry articles, (which is stated to be in the possession of the petitioner herein) which fact is denied by stating that the complainant had come to the matrimonial home and had taken away her entire *Istridhan*. At this juncture, it is difficult for this court to go into the veracity of the pleadings and it is a matter of evidence which is yet to be led. In similar circumstances, in the case reported as **Anil Rajput and others Versus State of Haryana 2010 (6) R.C.R. (Criminal) 1126**, it has been held “*The recoveries that may be due, are in the facts and circumstances liable to be inquired into. However, that would not now disentitle the petitioners to the concession of anticipatory bail. This is more so for the reason that if at some stage the parties agree to reconcile their differences then the fact that they had spent some time in custody would be a circumstance which may come in the way of amicably settling the matter.*” The this Court in a catena of judgments has held that bail cannot be denied only on the ground that

certain recoveries are yet to be made. In this regard reference can be made to the judgments rendered in Prit Pal Singh Versus State of Punjab and another 2014 (5) R.C.R. (Criminal) 771 and Ekta Versus State of Punjab and others 2016 (4) R.C.R. (Criminal) 426.

10. There is also another consideration before this court for confirming the anticipatory bail in favour of the petitioner. The minor child is in the custody of the petitioner and is now 8 years old and studying in a school in Amritsar. In case the petitioner herein is denied bail and taken into custody, it would have a devastating effect upon the minor child. Moreover, the complainant has already instituted a petition under section 125 of the Code of Criminal Procedure seeking maintenance, which petition has been allowed and it has been directed that a sum of ₹25, 000/- per month by order dated 31st of March 2018.

11. In the afore-noticed circumstances, the criminal miscellaneous petition is allowed and the interim bail granted on 27.5.2016 is made absolute. Needless to say any observations made herein are entirely for the purposes of deciding this criminal miscellaneous petition and not any opinion on the merits of the case which is to be decided on the basis of the evidence led in the trial court.

13.7.2018

(JAISHREE THAKUR)

prem

JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No