

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

Crl. Misc. M-29907 of 2017 (O&M)
Date of Decision: September 06, 2018

Mohit Kumar Adhana and others

...Petitioners

Versus

State of Haryana

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. J.S. Bedi, Senior Advocate with
Mr. Lovekirat S. Chahal, Advocate
for the petitioners.

Ms. Gaganpreet Kaur, AAG Haryana.

Mr. Sanjay Vashisth, Advocate
for the complainant.

JAISHREE THAKUR, J. (Oral)

The instant petition has been filed under Section 438 of Cr.P.C., for grant of anticipatory bail to the petitioners in FIR No.296 dated 02.08.2017, under Sections 354-B, 406, 498-A, 506 of the Indian Penal Code, registered at Police Station Bhupani, District Faridabad.

This court is informed that the petitioners did join the investigation, pursuant to the orders passed by this court.

Unfortunately, a dispute has arisen between the parties, on the basis of which the present FIR has been registered. Various allegations have been raised back and forth by the parties and it appears that mediation process between the parties is unsuccessful.

Mr. J.S. Bedi, learned Senior counsel appearing on behalf of the petitioners, assisted by Mr. Lovekirat S. Chahal, Advocate *inter alia* contends that the complainant had already left the matrimonial home, while taking with her the entire jewellery, which was in her possession. In this regard, a complaint had already been filed on 21.05.2017 and it is only subsequent thereto that the instant FIR has been registered. It is argued that a divorce petition was also filed, which is dated 30.05.2017 and appended with this petition as Annexure P-11 (learned counsel for the complainant submits that notice has not been received as on date in the said petition). It is also contended that in the said divorce petition, it is mentioned that the amount received as *shagun* during the wedding was taken back by the complainant's family, so that the same could be invested in the real estate. It is also submitted that detailed investigation has already been conducted under the orders of this court by the Investigating Officer and in para 8 of the additional reply filed by Mr. Yash Pal Singh, HPS, Assistant Commissioner of Police, Sarai, Faridabad dated 08.03.2018, it has come forth that *“Investigating Officer has taken photographs of C.D. of marriage of Bhupesh Nagar and verified that most of the gold jewellery are matching with record available on file.”* It is also pointed out that the allegation of receipt of ₹ 8,75,000/-, claimed to have been made to Ram Kumar (petitioner No.2), has been found to be false.

On the other hand, Mr. Sanjay Vashisth, learned counsel appearing on behalf of the complainant submits that the very investigation that was carried out would reflect that there is a statement of the complainant available on the record, which would show that out of the

jewellery that she was wearing at the time of wedding of her first cousin, one set belonged to her and the other belonged to her brother's wife. It is also argued that most of the payment towards the Audi car has been made by her father.

Per contra, Ms. Gaganpreet Kaur, learned counsel appearing on behalf of the respondent-State submits that a detailed investigation had been carried out in the matter, as has been reflected in the two status reports that have been filed. It is stated that the bills as provided by the complainant have been verified wherein, jewellery reflected to be of ₹20,65,735/-, while also submitting that there are payments reflected towards Audi car made by both the parties.

I have heard learned counsel for the parties and have perused the reports that have been filed.

Admittedly, the marriage between the parties has not stood the test of time, leading to the present litigation that has been ensued and at this stage, this court is not in a position to go into the question as to whether the dowry articles have been retained either by the petitioners or have been taken by the complainant herself. On the one side, in the complaint dated 21.05.2017 moved to the police (Annexure P-1) by petitioner No.1-husband it has been *inter alia* alleged that his wife has taken away all the jewellery with her, apart from making various other allegations. Further, in the divorce petition that has been filed by petitioner No.1-husband under Section 13(1)(ia) of Hindu Marriage Act on 30.05.2017, apart from levelling various allegations, it is also mentioned that all the jewellery was carried by the complainant, while she was going to attend the marriage of

Bhupesh. On other hand, a complaint came to be filed by the complainant on 03.07.2017, which was later on converted into the present FIR No.296 dated 02.08.2017, in which the complainant has levelled various allegations of harassment on account of bringing inadequate dowry and it is claimed that all the dowry articles, including the car and educational documents are in the possession of the petitioners herein.

In the opinion of this court, there is also a dispute that as to who has made the payment towards the Audi car and at this stage *prima facie* it appears that part payment has been made by both the parties, however, the same is a matter of evidence. As told to this court, investigation is still incomplete, even though two status reports have been filed.

There are plethora of judgments to the effect that bail should not be denied only on account of the fact that recoveries have not been made. Merely because recoveries of part of *Istridhan* are yet to be made, this court is not inclined to reject the petition. Denial of bail in normal circumstances cannot be used as a tool to effect recoveries. For this purpose, reliance has been placed upon judgment rendered by the Apex Court in the case of **Rajesh Sharma and others vs. State of U.P. and another, 2017(3) RCR (Criminal) 836** and of this High Court in **Anil Rajput and others vs. State of Haryana, 2010(6) RCR (Criminal) 1126**.

In view of the above, at this stage, without commenting on the merits of the case, the petition is being allowed and the order granting interim bail to the petitioners is being absolute subject to the conditions laid down in Section 438 Sub Section 2 Clauses (i)(ii) and (iii) of the Code of

Criminal Procedure. However, in the peculiar facts and circumstances of the present case, this court deems it appropriate to grant anticipatory bail to the petitioners in case, they deposit a sum of ₹ 15 lacs in lieu of the alleged recoveries that are yet to be effected.

The petitioners herein are directed to deposit the aforesaid amount of ₹ 15 lacs in the form of an FDR with the Illaqa Magistrate within a period of four weeks from today. The said FDR is to be made in the name of the complainant, with a lien marked to the Illaqa Magistrate, who would release it in case, the complainant is successful under the FIR. It is made clear that in case, the petitioners fail to deposit the aforesaid amount within the stipulated period, any protection granted to the petitioners by this order shall stand automatically vacated.

The petition stands allowed in the aforesaid terms.

It is made clear that anything observed or said by this court hereinabove is only for the purpose of deciding the present petition for grant of anticipatory bail and the same shall have no affect on the merits of the case in any manner.

September 06, 2018
vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No