

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

Crl. Misc. M 33233 of 2017 (O&M)
Date of decision: 6.7.2018

Ankit Gupta

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. R.S. Rai, Senior Advocate with
Mr. Anurag Arora, Advocate with
Ms. Amanpreet Kaur Sabharwal, Advocate,
for the petitioner.

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

Mr. Anand Chhibber, Senior Advocate with
Mr. Rakesh Chopra, Advocate,
for the respondent No.2.

JAISHREE THAKUR, J. (Oral)

1. This is a petition that has been filed under Section 438 of the Code of Criminal Procedure for grant of anticipatory bail to the petitioner in case FIR No. 41 dated 25.2.2017 registered under Sections 406 and 498-A IPC at Police Station Gobindgarh Mandi, District Fategarh Sahib.

2. The present petition has been filed after a matrimonial dispute arose between the complainant, namely Eshani Gupta and the petitioner herein. The marriage between the parties had been solemnized on 18.7.2010, out of which wedlock a son was born on 19.3.2013. Unfortunately, the marriage has not stood test of time and the parties separated on 6.6.2016, leading to

multifarious litigation initiated at the behest of both the parties. A petition under Section 9 of the Hindu Marriage Act for restitution of conjugal rights as well as a petition seeking for visitation rights was filed by the husband, while a complaint was filed on 25.2.2017, on the basis of which the instant FIR was registered, as well as a petition for divorce was filed by respondent No.2—wife on 29.4.2017.

3. Mr. R.S. Rai, learned Senior Counsel, assisted by Mr. Anurag Arora, appearing on behalf of the petitioner, submits that after the marriage was solemnized between the complainant and the petitioner on 18.7.2010, they went to Europe for their honeymoon and both were living a happy married life and out of this wedlock a male child was born. It is further submitted that the parties separated from each other on 6.6.2016 and before that not a single complaint had been instituted by the complainant against the petitioner. It is further argued that all allegations of beatings levelled against the petitioner are not supported by any medical evidence; nor did any such incident ever take place. Rather the photographs placed on record depict that they were living a happy life. It is submitted that the allegations of demand of dowry and the averments that a sum of ₹3.50 crores were spent on the marriage are false and not substantiated by any documentary evidence.

4. Per contra, Mr. Anand Chhibber, learned Senior Counsel, assisted by Mr. Rakesh Chopra, submits that a substantial amounts i.e. approximately ₹3 crore was spent in the marriage in terms of cash/jewellery and wedding expenses. It is also submitted that a pen drive has been supplied to the police which would reflect *Roka* ceremony, ring ceremony and marriage ceremony and the gifts given on the said occasions and as such, the averments made in the FIR are correct. It is further contended that the petition that had been filed

seeking visitation rights on 10.10.2016 has been dismissed on 25.5.2018. It is argued that the complainant had been subjected to extreme cruelty and she and her minor child had been thrown out of her matrimonial home without any clothes or any means of support. It is also submitted that the jewellery had been retained by the in laws family as it was kept in a joint locker with her mother in law, who had also operated the locker after she had been thrown out. Learned Senior Counsel appearing on behalf of the complainant would submit that as on date, the petitioner has not bothered to see the minor child, neither the gold items, as mentioned in the FIR, have been returned; nor any maintenance is being paid to the complainant since the year 2016 when the divorce petition had been filed. It is argued that there are sufficient allegations, as made out in the FIR, for declining the anticipatory bail that has been filed by the petitioner.

5. At the very outset, it must be mentioned that this Court, keeping in mind that the dispute involved in the present petition is a matrimonial dispute and a minor child was involved, had directed the parties to appear before the Mediation and Conciliation Centre of this Court, which proceedings have ultimately failed. Thereafter, before this court an offer was made by the petitioner to settle all the disputes between the parties and made an offer to pay the respondent complainant a sum of 1 crore which was not accepted, by submitting that an amount of ₹3 crore had been spent on the marriage, which included various gold items, diamond jewellery, silver items, apart from cash and household items, which had been given during various ceremonies that had been performed before and after the marriage. This Court on 22.12.2017, called upon the respondent—State to file a status report as to the investigation done regarding /bills submitted and verified/any recoveries etc. Pursuant to which a status report dated 9.1.2018 has been filed. As per the report, verified bills of

the year 2008 and 2009 (totaling ₹25,29,024/-) were submitted to the Investigating Officer pertaining to gold along with photographs of the marriage, 7 CDS, one pen drive and marriage invitation card.

6. Even today when this case was taken up for final disposal, another attempt was made by this court to resolve the dispute and the petitioner herein agreed to settle all disputes and enhance the amount, however, all attempts to arrive at a settlement between the parties have failed. The factum of dismissal of the petition filed for visitation rights is not denied by the learned Senior Counsel appearing on behalf of the petitioner, who submits that subsequent thereto a petition for custody has also been preferred, which is pending.

7. I have heard learned counsel for the parties and have gone through the pleadings of the case. These are unfortunate circumstances when the marriage soured and there is extreme bitterness between the parties. This Court has made every attempt for reconciliation between the parties, which have failed. The claim of the respondent-complainant herein that an amount of ₹3 crore was spent on the marriage, has been denied by the petitioner while relying on the verified bills of the year 2007 and 2008 (as per the status report) where only ₹25 lakhs were shown to have been spent on jewellery items. The argument that the jewellery has been retained by the family members as the same was kept in a joint locker can not be decided in these proceedings and is a matter for the trial court to decide. Moreover, the allegations as raised by the respondent-complainant that the locker has been operated in her absence is a disputed question of fact. It has been averred in the petition that the complainant came to her matrimonial home on 12.6.2016 and took away her jewellery on the pretext of attending a marriage of a close relative, to which no reply has been filed. At the present moment this court is unable to go into the

issue as to the expenditure incurred and whether there has been any cruelty inflicted upon the complainant as alleged or misappropriation of istridhan since it is a matter of evidence.

8. 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 Anil Rajput and others Versus State of Haryana 2010 (6) R.C.R. (Criminal) 1126, 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.

9. Furthermore, in Rajesh Sharma and others Versus State of U.P. and another, 2017 AIR (SC) 3869, the Apex Court has categorically held that the police and the Courts should not be quick to resort to the method of arrest and that arrest should be the last resort.

10. As already noticed, all efforts made to amicably settle the matter by the Mediation and Conciliation Centre of this Court as well as by this Court have failed. In the instant case when the petitioner has been cooperating with the investigating agency after grant of anticipatory bail on 8.9.2017, he deserves to have the same to be confirmed. Without delving into all issues as raised above, which are a matter of evidence, this Court deems it fit to confirm the anticipatory bail of the petitioner. Ordered accordingly.

11. However, interim order is made absolute subject to the condition that the petitioner herein shall deposit a sum of ₹75 lakhs in the form of FD in the name of the minor child and deposit the same before the Illaqa Magistrate/trial court. The amount to be deposited within a period of six weeks from today. The FD to mature on the minor child attaining majority. It is directed that quarterly interest, which will be accruing on this FD would be

remitted to the mother—respondent No.2, being one of the natural guardians for the expenses of the minor child aged 5 years. Further, this deposit of ₹75 lakhs is without prejudice to any rights of the complainant in the petitions filed under Section 24 of the Hindu Marriage Act and Section 125 of the Code of Criminal Procedure and or any other proceedings which may be initiated in this regard and the same is adjustable with any order/final settlement that may arise interse the parties.

12. It is prayed that the petitioner should be entitled to one week visitation rights along with the minor spending half of his holidays with him. As far as custody/visitation of the minor child is concerned, the petitioner herein has already filed a petition before the Guardian Court at Amloh. The concerned court is directed to hear the said application and decide the same as expeditiously as possible, preferably within two months from today.

13. However, it is made clear that any observation made hereinabove is primarily for the purpose of disposal of the instant petition and not on merit of the case.

6.7.2018
prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No