

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

Criminal Misc. No.M- 3975 of 2017(O&M)

Date of Decision: January 18 , 2018.

Amit Kumar Kamal

..... PETITIONER (s)

Versus

State of Punjab and another

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Achin Gupta, Advocate
for the petitioner.

Ms. Monika Jalota, DAG, Punjab.

Mr. Deepinder S.Brar, Advocate
for respondent No.2.

LISA GILL, J.

Petitioner has preferred this second petition seeking anticipatory bail in FIR No.32 dated 30.06.2016 under Sections 376/493 IPC (subsequently Section 498A IPC added and Sections 376/493 IPC deleted), registered at Police Station Women, District Bathinda. His first petition, CRM No.M-26557 of 2016 was dismissed on 19.08.2016 vide a detailed order.

It is submitted that the offences punishable under Sections 376/493 IPC have been deleted and the petitioner is being proceeded against for the offence punishable under Section 498A IPC as is reflected in report dated 31.12.2016 by the Superintendent of Police (Traffic), Bathinda. It is vehemently

argued that the petitioner and the complainant solemnized marriage in the year 2012 and were living together as husband and wife ever since. There is thus no truth in the allegations raised by the complainant. It is further submitted that even if the allegations against the petitioner are accepted, it is a consensual relationship and no offence punishable under Section 376 IPC is made out against him. It is submitted that the petitioner had filed a petition under Section 9 of the Hindu Marriage Act, 1955 on 02.05.2016. The same was however withdrawn after statements of the parties were recorded in the said proceedings. Moreover, at this stage the petitioner is being proceeded against only for the offence punishable under Section 498A IPC. Final report under Section 173 Cr.P.C. has since been presented. It is submitted that in these circumstances the second petition seeking anticipatory bail is maintainable and should be allowed.

Learned counsel for the complainant/respondent No.2 has vehemently opposed this petition while stating that the present is a second petition for anticipatory bail filed by the petitioner, which is per se not maintainable. Moreover, deletion of the offences under Sections 376/493 IPC is reflective of connivance of the police authorities with the petitioner. The hollowness of the petitioner's claim is apparent from the fact that the first complaint against him was lodged by the complainant on 09.04.2016. The petitioner appeared before the Deputy Superintendent of Police, City II, Bathinda on 22.04.2016 and undertook to solemnize marriage with the complainant in court. On the basis of the petitioner's statement, the complaint was not pursued by the complainant. The complainant was made to sign a number of papers on the pretext that court marriage was to be solemnized. However, marriage was not

solemnized. The petitioner in a surreptitious manner filed a petition under Section 9 of the Hindu Marriage Act, 1955 and misused the blank papers got signed from the complainant to create evidence. It is specifically pointed out that the complainant is a native of Uttar Pradesh and is not conversant with Punjabi language. She was befooled by the petitioner. The said petition was withdrawn by him. Moreover, all these facts have been considered by this Court on 19.08.2016 while dismissing the petitioner's first application seeking anticipatory bail. It is further submitted that the petitioner thereafter in a malafide manner moved for re-inquiry in the manner which was conducted in a totally lopsided and illegal manner. The complainant reserves her right to seek her remedies in this regard. It is submitted that the petitioner is trying to misuse the process of law. Therefore, this petition be dismissed.

I have heard learned counsel for the parties at length and have gone through the file with their able assistance.

It is not in dispute that FIR No.32 dated 30.06.2016 under Sections 376/493 IPC was registered on the basis of a complaint submitted by the complainant. It is specifically mentioned that the petitioner allured her into a physical relationship on false assurances of marriage. When he refused to marry her, a complaint was submitted by her on 09.04.2016 which was withdrawn on a statement made by the petitioner before the Deputy Superintendent of Police, Bathinda on 22.04.2016 that he would marry the complainant. Offences punishable under Sections 376/493 IPC have been deleted on the basis of a report dated 31.12.2016. It is observed in the said report that the petitioner and the complainant had got married in the year 2012 at Hanuman Temple at Diviyapur,

Uttar Pradesh and thereafter lived together as husband wife. Reference is also made to petition under Section 9 of the Hindu Marriage Act, 1955. On the basis of these facts it is recommended that the offences punishable under Sections 376/493 IPC be deleted and Section 498A IPC be added.

Learned counsel for the State had been directed on 20.11.2017 by this Court to inform regarding the basis on which recommendation for such deletion has been made in view of complete absence of any document on record to show solemnization of marriage between the petitioner and the complainant. No such documentation is forthcoming. There is no material on record to show that the Investigating Agency had ever visited the said temple to verify the factum of marriage. The report appears to have been submitted on a basis/premise which is prima facie unsubstantiated

Argument of learned counsel for the petitioner that at this stage, it is only Section 498A IPC which is being pressed against the petitioner therefore, this petition be allowed, is fallacious, untenable hence, rejected. This Court while passing order dated 16.08.2016 in CRM No.M-26557 of 2016 has specifically considered the petition under Section 9 of the Hindu Marriage Act, 1955 filed and thereafter withdrawn by the petitioner. While considering the facts and circumstances, it is specifically observed in the said order that,

“All the documents filed along with the application have been prepared after the registration of the FIR. These are the documents which have been created on the basis of information supplied by the petitioner to his Department. The revised form was submitted in June, 2016 wherein his marital status is shown as married and the name of his spouse is not mentioned and the nominee remains the mother. The information given to the medical insurance company is

for inclusion of the name of the wife. That information was also given in May, 2016. The petitioner could not place on record any document to show that they had got married in 2012. No case for anticipatory bail is made out.”

The argument that final report/challan has been presented under Section 498A IPC therefore this petition should be allowed, is also meritless. The petitioner was granted interim relief in this case and presentation of challan in this interregnum does not entitle him to any relief in the facts and circumstances of the case.

Keeping in view the serious allegations against the petitioner, I do not find any ground whatsoever to allow this subsequent petition for anticipatory bail filed by the petitioner.

Petition is accordingly dismissed.

It is clarified that none of the observations made hereinabove shall be construed to be a reflection on the merits of the case. The same are solely confined for the purpose of decision of the present petition.

(LISA GILL)
JUDGE

January 18 , 2018.
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No