

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

CRM-M No.41565 of 2016 (O&M)

Date of decision: 5th December, 2018

Bhoomika Saroha

... Petitioner

Versus

State of Haryana & another

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. KDS Hooda, Advocate for the petitioner.

Mr. Gaurav Bansal, Asstt. Advocate General, Haryana
for respondent No.1/State.

Mr. Alok Mittal, Advocate for respondent No.2.

FATEH DEEP SINGH, J.

This is a petition by the aid of Section 439(2) Cr.P.C. having been moved by the petitioner complainant/wife Bhoomika Saroha through which she has sought cancellation of anticipatory bail granted to respondent No.2 Rahul Malik, her husband, vide orders dated 11.08.2016 (Annexure P4) in case bearing FIR No.84 dated 14.10.2015 under Sections 323, 498A, 406, 506, 34 IPC pertaining to Police Station Women, Sonapat.

The brief grounds that form her assailment are that the police were biased during the investigation and even upon presentation of report under Section 173 Cr.P.C. all the accused were directed to appear in the Court and though all the accused appeared but accused Rahul Malik

respondent No.2 failed to put in appearance. It is contended that respondent No.2 is trying to seek exemption from his personal appearance and it is alleged that the claim of the husband that he is posted in Kargil under the Indian Army is not substantiated and there is no question of law and order situation in the region of his posting and thus, is bent upon misusing the concession of anticipatory bail so granted to him and thus, seeks its cancellation.

State respondent No.1 filed reply by way of affidavit of Mukesh Kumar, HPS, Deputy Superintendent of Police, Head Quarter, Sonipat taking the stand that impartial and searching investigation has been conducted by the investigating agency on the complaint of the complainant and report under Section 173 Cr.P.C. has already been filed in Court for commission of offences under Sections 498A, 406, 506, 323, 34 IPC. It is claimed that the accused No.2 was allowed anticipatory bail by the Hon'ble High Court vide orders dated 11.08.2016 and he has duly joined the investigations and has been released on bail. It is further claimed that it was on the application of the accused because of exigencies of duty, exemption of personal appearance was allowed by the Court concerned and denied each and every allegation. It is the stand of respondent No.1 that the articles recovered during the investigations were handed over to complainant who has received some of them and denied

to receive the remaining for her own reasons, and sought dismissal of the application.

Respondent No.2 took the similar stand by way of preliminary objections that it was a counterblast to his divorce petition earlier filed against the complainant wife and that investigation in this case has already been finalized and report under Section 173 Cr.P.C. has been filed in Court. On merits, the husband respondent No.2 has denied the allegations levelled by the wife claiming that neither any demand of dowry was ever made by the family including respondent No.2 nor any such article was received in lieu of the marriage and all these allegations are an outcome of vengeance to seek mental and physical torture of the in-laws by the complainant, terming each and every allegation to be false and incorrect and that at no point of time he ever interfered in the investigations or stifled the trial. It was further contended that on account of his posting in a sensitive forward area he could not secure leave on each and every date of hearing and thus, the prayer for seeking exemption from personal appearance was made.

Heard Mr. KDS Hooda, Advocate for the petitioner; Mr.Gaurav Bansal, Asstt. Advocate General, Haryana for respondent No.1/State; Mr. Alok Mittal, Advocate for respondent No.2 and perused the records.

The petitioner has filed present petition seeking cancellation of grant of anticipatory bail to respondent No.2, husband of the petitioner/complainant. As is there in the own arguments of the two sides, the husband is an IPS officer, presently posted in Kargil, a sensitive forward area in the State of Jammu and Kashmir and it is the stand of respondent No.2 that on account of exigencies of duty he could not secure leave on each and every date of hearing. The learned counsel for the petitioner could, by no means convince this Court how or by what act of respondent No.2, there has been a prejudice caused to the complainant which has also resulted in miscarriage of justice to her. Purely because the parties are at loggerheads and cases are pending between them and as a natural corollary insinuations are bound to be levelled against each other on one pretext or the other. It is not either pleaded or proved by the petitioner wife that the absence of respondent No.2 at the trial has resulted in prolonging the same or there has been any element of coercion or threat to any of the witnesses or they are not being allowed to appear and testify. Merely because the husband is an officer in the Indian Police Force and is posted in the State of Jammu and Kashmir, it is highly unacceptable that he could have an influence upon the investigations or trial in Sonipat where the same is pending, especially in the absence of any tangible evidence or an allegation to the contrary.

Powers to dispense with personal attendance of the accused under the provisions of Section 205 and 317 Cr.P.C. are wide enough and where a Court is satisfied that it is necessary in the interest of justice, where a person is represented by a pleader, it may dispense with his attendance and proceed with the inquiry or the trial as the case may be, and therefore, does not in any manner appears to be an influence upon the trial. The Hon'ble Supreme Court in '**Dolat Ram vs. State of Haryana**' **1995 (1) SCC 349** considering such an aspect for cancellation of bail of an accused has held that very cogent and convincing overwhelming circumstances are necessary and essential for an order directing the cancellation of bail already granted.

Learned counsel for the petitioner wife could not convince how there has been any interference by the husband respondent No.2 either in the investigations, trial or is evading his presence to protract the trial. Respondent No.2 is a gazetted officer of All India Services and being posted in a sensitive place in the States of Jammu and Kashmir where the situation of law and order is highly volatile and therefore, the Court has to strike a balance between his exigencies of duties towards the Nation as well as in the dispensation of justice. There is nothing substantial brought to the notice of the Court of any such circumstance which is not conducive to fair trial to the petitioner. Rather it appears to

the mind of this Court that this is a mere ploy by the petitioner wife as an act of overawing respondent No.2 and the Court needs to ensure that it is not used as a tool to satisfy such a personal element of revenge or vengeance of a party and plays in the hands of the petitioner. There being no merit in the present petition, the same stands dismissed.

(FATEH DEEP SINGH)
JUDGE

December 5, 2018

rps

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No