

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

CRM-M-7006-2019

Date of decision: February 14, 2019

Santosh Kamal

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM:HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr.S.K. Jain, Advocate
for the petitioner.

HARINDER SINGH SIDHU, J.

The present petition has been filed under Section 482 Cr.P.C. for directing respondents No.1 to 3 to arrest respondents No.5 and 6 in case FIR No.0307 dated 27.09.2018 under Section 380 of the Indian Penal Code, registered at Police Station Rajpura City, District Patiala and for directions that the investigation in the case be got conducted from some independent agency.

The petitioner is an old lady aged about 62 years. It is stated that she is having three sons. All of them are residing separately and doing their independent business. The youngest son of the petitioner namely Rajeev Kamal is married with Asha Kamal-Respondent No.4. From the marriage, one son namely Pratham was born who is presently 13 years old and is studying in 5th standard. Husband of the petitioner had died on 24.8.2014. The youngest son of the petitioner namely Rajeev Kamal along with his wife Asha Kamal has been residing with the petitioner. The

petitioner got an FDR of Rs.25 lacs prepared in the name of her grandson-Pratham on 2.2.2015 as respondent No.4 Asha Kamal has assured the petitioner that she would take care of the petitioner and her son-Rajeev Kamal who is a simpleton and not able to look after his own affairs. It is alleged that immediately after the preparation of FDR in the name of the grandson of the petitioner, respondent No.4 left the matrimonial home and took her son Pratham along with her to her parental home. Thereafter, she transferred the amount of the FDR from SBI Mutual Funds to State Bank of Patiala, Grain Market, Rajpura Town. Thereafter, she neither took care of the petitioner nor of her own husband. It is further alleged that in the absence of the petitioner and her husband, respondent No.4 came to the house of the petitioner along with Respondents No.5 and 6 and committed theft of 20 tollas of gold belonging to the petitioner. Regarding this FIR No.0307 dated 27.9.2018 under Section 380 IPC was registered at Police Station, Rajpura City, Patiala.

The petitioner has filed this petition alleging that respondents No.5 and 6 in collusion with respondent No.4 are continuously issuing threats to the petitioner asking her to withdraw said FIR. The police is not investigating the case properly. Directions are sought to the official respondents to arrest respondents No.5 and 6.

Respondent No.4 has been granted anticipatory bail vide order dated 20.11.2018, of learned Additional Sessions Judge, Patiala (Annexure P-2). The Ld. Judge has observed that both the parties are making allegations and counter allegations against each other which are arising from a matrimonial dispute. As respondent No.4 was the legally wedded

wife of the son of the petitioner it was a disputed fact as to whether the gold belongs to her being her Istridhan or to the complainant party. Accordingly she was granted anticipatory bail.

The prayer of the petitioner for directions to arrest respondents No. 5 and 6 cannot be granted. It is well settled as held by Hon'ble Supreme Court in **M.C. Abraham v. State of Maharashtra** 2003(2) SCC 649 that it is for the Investigating Officer to make up his mind as to whether it is necessary to arrest the accused person and that the Court cannot issue any direction to arrest an accused. The power is discretionary and a police officer is not always bound to arrest an accused even if the allegation against him is of having committed a cognizable offence.

The allegations regarding threat received by the petitioner are absolutely vague. No specific incident has been referred to. In the absence thereof no direction as prayed for can be issued. However, if at any time in the future the petitioner faces any threat it would be open to her to file a complaint/representation giving details of such threat. There is no reason to believe that if any such representation is filed the same would not be looked into as per law.

The petition is disposed of accordingly.

February 14, 2019
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(HARINDER SINGH SIDHU)
JUDGE

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No