

203+102.

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

CRM-M-2562-2018 (O&M)

Date of decision:29.05.2019.

SAKSHAM GUPTA

.... Petitioner

versus

STATE OF PUNJAB AND ANR

.... Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. A.D.S. Sukjija, Advocate, for
Mr. L.M. Gulati, Advocate,
for the petitioner.

Mr.Rana Harjasdeep Singh, DAG, Punjab,
for respondent No.1.

Mr. Ashok Sharma Nabhewala, Advocate,
for respondent No.2.

HARI PAL VERMA, J.

Prayer in this petition filed under Section 438 Cr.P.C. is for grant of anticipatory bail to the petitioner in FIR No.162 dated 23.09.2017 registered under Sections 406/498A of IPC at Police Station Kharar, District SAS Nagar, Mohali.

The aforesaid FIR was registered at the behest of Aditi Goyal (complainant-respondent No.2), who married the petitioner-Saksham Gupta on 27.04.2015. As per the FIR, the parents of the complainant spent about Rs.30 lakhs in the marriage, but right from the first day of the marriage, the in-laws family was not happy. After marriage, when the complainant went to her in-laws family at Ghaziabad, she was taunted by her in-laws while

the marriage. Their hope/wish for a big car also shattered. Though the complainant tried to convince her in-laws family that her parents are salaried employees and they have already spent substantial amount in her marriage beyond their capacity, but still they (accused) were not satisfied. They forced her that she should get their wish of car fulfilled from her parents. The complainant tried to convince the petitioner (husband) that whenever there will be happy occasion in her family like her brother's marriage, she will talk to her parents to meet the demand of car, but still the petitioner was not ready to agree.

On 29.03.2016, a daughter was born to the complainant in her parental house in Sekhon Nursing Home, Sector 33, Chandigarh. On the birth of a daughter, her in-laws family expressed unhappiness and stated that she (complainant) has supplemented their burden by giving birth to a girl child.

Since the complainant has opened an account under the "Sukanya Scheme" and has deposited some amount in this account, the in-laws family misbehaved with her and rather stated that they needed the money in cash. Thereafter, the complainant came to know that her father-in-law was having some property dispute and he has to repay money to certain persons. Then she came to know that her all salary was withdrawn from her bank account and was used for returning the debt of her father-in-law. Though initially the complainant did not object, but after giving birth to a daughter, she realized that she should have some money for the future of the child by saving the salary. On this, her husband started abusing and misbehaved with her. The complainant did not disclose anything to her parents.

On 02.04.2017, the engagement ceremony of the complainant's brother Adarsh Goyal was scheduled to be held in Hemtel Hotel. Her parents and brother gave invitation to her in-laws family by going to Ghaziabad on 29.03.2017. Since on the said day i.e. 29.03.2017, it was the birthday of the complainant's daughter, many gift articles were brought by them. After attending the function at Ghaziabad, the complainant along with her parents came to Chandigarh in the night, but before coming, the complainant asked her mother-in-law to give her some jewellery so as to wear in the function i.e. marriage of her brother. However, her mother-in-law replied that as the bank will reopen the next day, after getting the ornaments from the locker, they will bring the ornaments on the day of function.

But on the relevant day, none came from her in-laws family to attend the function and on repeated calls, her husband reached in the evening straightway to Hotel Hemtel and after one hour, he went back by saying that he has received a telephonic call that the condition of his father, who is a heart patient, has suddenly deteriorated and he has to take him to hospital. However, her maternal uncle accompanied the petitioner for Ghaziabad and on reaching there at 2.30 in the night, they found that her father-in-law was absolutely fine and was sleeping. The next day i.e. 03.04.017, the complainant along with her parents and brother also reached her in-laws house. Her in-laws started complaining that they were told that whenever the marriage of her brother-Adarsh would be fixed, they would be given some big item as a gift but nothing was given to them. The complainant's father tried to convince the in-laws that at the time of marriage of Adarsh, they will

daughter.

The marriage of her brother was fixed for 12.05.2017. On 06.05.2017, her parents along with wedding card and envelop of shagun reached her in-laws house, but after watching envelop of shagun which contained Rs.11,000/-, her father-in-law started abusing them and her husband also gave beating to her father. Her husband threatened her parents that they will involve him in a false case, due to which they put their hands under pressure before the police in writing that they have not given any dowry.

All the dowry articles including gold jewellery are lying in the house of her in-laws. She had been harassed and maltreated by her in-laws on account of demand of more dowry. On the basis of aforesaid complaint, the present case has been registered.

The petitioner filed an application for grant of anticipatory bail before the learned Additional Sessions Judge, SAS Nagar, Mohali, but the same was declined vide order dated 12.01.2018.

This Court while issuing notice of motion in the case on 22.01.2018 passed the following order:-

“Counsel for the petitioner submits that the petitioner is ready to settle the dispute amicably either by rehabilitating the wife in the form of permanent alimony, maintenance etc. or residing together. She submits that the matter should be referred to mediation.

The bail application was declined primarily on the ground that the petitioner herein was not cooperating. This Court is not inclined to interfere for grant of anticipatory bail to the petitioner, however, an assurance has been given to this Court that every effort will be made by the petitioner to settle

the dispute before the Mediation and Conciliation Centre of this Court.

Notice of motion.

Parties are directed to appear before the Mediation and Conciliation Centre of this Court on 01.03.2018.

Meanwhile, in view of the assurance given above, the petitioner, in the event of arrest, be released on interim bail subject to his furnishing personal bonds and surety to the satisfaction of Arresting/Investigating Officer. However, the petitioner shall join the investigation as and when called upon to do so and shall abide by the conditions as provided under Section 438 (2) Cr.P.C.

Petitioner is directed to bring a sum of Rs. 15,000/- as litigation expenses payable to the respondent-complainant, on the next date of hearing.”

The matter was accordingly sent for mediation as some recovery including the documents of the complainant were to be effected in the case and the petitioner was directed to cooperate with the investigation.

Counsel for the complainant has filed an application i.e. CRM-2729-2019 mentioning the list of items which were not recovered in the case so far and accordingly, the petitioner was directed to appear before the I.O. on 29.04.2019 to join investigation.

Counsel for the petitioner has argued that present is a case of extreme misuse of provisions of Section 498-A IPC. It is the complainant who could not adjust in the family. She used to harass and maltreat the petitioner and his parents. The complainant had threatened the petitioner either to leave his parents or to face the consequences of a false case.

Though efforts were made by the respectables to resolve the matter at

moved a false and frivolous complaint against the petitioner and his parents. It has become a tendency to involve every family member with the allegation of dowry demand and harassment thereof, whereas the ground reality is entirely different and for one reason or the other, in the present case, the couple could not pull well. The registration of present case is a glaring misuse of process of law. No custodial interrogation of the petitioner is required in the case as all dowry articles, as alleged, have already been taken away by the complainant which has duly been established in the enquiry. The petitioner has joined the investigation number of times, but the Investigating Officer has wrongly reported before the learned Additional Sessions Judge that the petitioner is not cooperating with the investigation and his custodial interrogation is required. Since the IO is biased towards the petitioner and his parents, he is acting under the influence of the family of the complainant, who are Punjab Government employees. The FIR has been chosen to be registered at Kharar, whereas the complainant and family members are permanent residents of Chandigarh and the complainant, after marriage, lived at Ghaziabad. They have neither approached the Chandigarh police nor the Ghaziabad police, but has approached the Kharar police for the reasons but known to the complainant. In view of judgment of Hon'ble Apex Court in ***Arnesh Kumar Versus State of Bihar and another*** passed in SLP (Crl.) No.9127 of 2013, the petitioner is entitled for grant of anticipatory bail.

Counsel for the complainant as well as the State counsel have argued that recovery in the case is yet to be effected. Since the petitioner is not cooperating with the investigation, he is not entitled for the discretionary

I have heard learned counsel for the parties.

The order dated 22.01.2018 passed by this Court does reflect that the petitioner has got interim bail primarily on his statement that he is ready to settle the dispute amicably either by rehabilitating the wife in the form of permanent alimony, maintenance etc. or residing together and on this plea, the matter was referred to mediation also. Not only the mediation failed but during investigation, the petitioner despite having joined the investigation has not cooperated with the investigation. Much of the articles are still required to be recovered in the case. The conduct of the petitioner during investigation when his anticipatory bail was being considered before the learned Additional Sessions Judge was somewhat similar, as though he joined the investigation but did not cooperate and accordingly, his custodial interrogation was necessitated.

The petitioner is husband of the complainant. The marriage took place on 24.01.2015. At different times, petitioner was directed to cooperate with the investigation but recovery of dowry articles has not been completely effected. In this manner, this Court finds no ground to admit the petitioner on anticipatory bail.

Accordingly, present petition stands dismissed.

(HARI PAL VERMA)
JUDGE

29.05.2019
sanjeev

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