

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

CRM-M-17287-2019 (O&M)

Date of decision: **14.11.2019**

Tejpal Singh Bajwa

....Petitioner

Versus

State of Punjab

.....Respondent

CORAM : HON'BLE MR.JUSTICE GURVINDER SINGH GILL

Present: Mr. Manbir Singh Basra, Advocate
for the petitioner.

Ms. Rashmi Attri, AAG, Punjab.

Mr. Sushil Gautam, Advocate
for the complainant.

GURVINDER SINGH GILL, J. (ORAL)

CRM-22498-2019

1. This application has been filed by the applicant/complainant seeking issuance of a direction to Director PGIMER, Chandigarh for conducting DNA test of Gurhetpal Singh Bajwa and the petitioner-Tejpal Singh Bajwa.
2. This Court is of the opinion that the aforesaid controversy does not have much to do with the controversy in hand i.e. matter pertaining to anticipatory bail. Accordingly, the application being sans merit is

dismissed. It is however clarified that dismissal of this application will not prejudice the rights of either of the parties to move any such application at appropriate stage before any other forum and the dismissal of the application will not be taken to be any kind of precedent.

Main Case

1. The petitioner seeks grant of anticipatory bail in respect of FIR No.4 dated 17.1.2019 under Sections 420, 494, 120-B IPC, Police Station Sadar Gurdaspur, District Gurdaspur.
2. The FIR was lodged at the instance of Harpreet Kaur, wherein it has been alleged that she solemnized marriage with Ranjit Singh on 27.10.2011, which was a love marriage against the wishes of her parents. However since Ranjit Singh later started harassing her and was pressing upon her to bring cash, therefore, she got her marriage dissolved by a decree of divorce. Later, her marriage was solemnized with the petitioner-Tejpal Singh Bajwa, who is working as a Colonel in Army. Tejpal Singh Bajwa had represented that he is a divorcee and that his earlier wife works in Delhi and has custody of child to whom he pays an amount of ₹8,000/- per month as maintenance. Petitioner-Tejpal Singh Bajwa had further represented that he gave one plot and a car to his divorcee wife and has no relation with his said ex-wife. On the basis of said representation, marriage of the complainant was solemnized with the petitioner and a child was also born out of the said wedlock. The complainant has alleged that later the petitioner starting giving beatings to her. The complainant alleged that subsequently she came to know that petitioner-Tejpal Singh

Bajwa had misrepresented regarding his marital status and in fact he had not taken divorce from his earlier wife. The complainant further alleged that the petitioner used foul language and hurled abuses and had retained all of her gold ornaments and other expensive clothes.

3. The learned counsel for the petitioner has submitted that he has falsely been implicated in the present case and that position regarding marital status had been made more than amply clear to the complainant when it had been decided that the marriage between petitioner and complainant would be solemnized. Learned counsel has submitted that the marriage of the petitioner with his earlier wife stands formally dissolved by a decree of divorce, although the petitioner and his ex-wife had parted ways much earlier and were residing separately. Learned counsel has submitted that it is a case of second marriage for both the parties but since the marriage between complainant and petitioner did not work well, the complainant has lodged the present FIR in order to pressurize the petitioner to part with his property.
4. On the other hand learned State counsel assisted by learned counsel for the complainant has submitted that it is a case of misrepresentation inasmuch as the petitioner, as on the date of marriage with the complainant was not formally divorced from his earlier wife and his marriage was still subsisting regarding which the petitioner kept the complainant in dark. Learned counsel for the complainant has submitted that in these circumstances the marriage of the petitioner with the complainant is a void marriage and since the consent of the complainant

regarding physical relation with the petitioner was on account of misrepresentation of the marital status, therefore, the petitioner has in fact rendered him liable for having committed an offence punishable under Section 376 IPC as well. A prayer has thus been made for dismissal of the bail.

5. I have considered rival contentions addressed before this Court. It is not disputed that it is a case of second marriage of both the parties and that the child was also born out of the said wedlock. It does appear that the earlier marriage of the petitioner was formally dissolved after he contracted marriage with the complainant and which could attract an offence under Section 494 IPC. Although the stand of the petitioner is that he had made complainant and other members of her family fully aware about his marital status and that the complainant had willingly chosen solemnization of marriage with the petitioner but it will be a matter of evidence as to whether any misrepresentation was made by the petitioner or not. In any case, since the petitioner is already stated to have joined investigation, custodial interrogation is not warranted in the present case. The petition as such is accepted and the interim directions issued vide order dated 16.4.2019 by this Court are hereby made absolute subject to the condition that the petitioner would appear before Investigating Officer as and when called upon to do so and cooperate with the Investigating Officer and shall also abide by the conditions as provided under Section 438 (2) Cr.P.C.

6. It is however, made clear that the petitioner shall continue paying

maintenance to his child born out of their wedlock at the rate of ₹10,000/- per month as was directed earlier vide order dated 28.5.2019. However in case any maintenance is awarded to the said child under any other proceedings, the aforesaid amount shall be adjusted thereunder.

7. It is clarified that none of the observations made above shall be construed to be an expression on merits of the main case.

14.11.2019
Gaurav Sorot

(GURVINDER SINGH GILL)
JUDGE

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