

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

CRM-M-40275-2017

Date of decision: March 12, 2019

Ismail

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present: Mr. Jamshed Ahmed, Advocate
for the petitioner.

Mr. Arun Kumar, AAG, Haryana.

Mr. Saleem Ahmed, Advocate
for the complainant.

RAJ SHEKHAR ATTRI, J.

Through the instant petition preferred under Section 438 of Code of Criminal Procedure, petitioner has sought anticipatory bail in case bearing FIR No.218 dated 03.05.2017, under Sections 498-A, 323, 406 and 506 of the Indian Penal Code, 1860 (for short 'IPC'), registered at Police Station Sector-55, Faridabad, District Faridabad, Haryana.

Petitioner had performed *nikah* with complainant-wife on 16.07.2016.

FIR has been lodged by the complainant-wife on 03.05.2017 *inter alia* on the grounds that petitioner and his family members are demanding more dowry; and that they have been maltreating and beating her for bringing insufficient dowry. Numerous instances have been given in the FIR with regard to the cruelty.

On 01.11.2017, petitioner was granted interim bail by this court on joining of investigating before the Arresting/Investigating Officer. Although, he has joined the investigation but nothing has been

recovered from him.

On previous date i.e. 13.02.2019, learned counsel for the petitioner undertook to pay the market value of 06 tolas of gold and 02 kilograms of silver to the wife by way of FDR within a period of three weeks but he failed to comply with the same.

Learned counsel for the petitioner has submitted that non-recovery of dowry articles is not a ground to decline the relief of anticipatory bail and to substantiate this plea, he has placed reliance upon the judgment of Hon'ble Supreme Court in case titled as *Rajesh Sharma and others Vs. State of U.P. and another*, 2017 SCC Online SC 821. But the facts in that case are distinguishable.

I have heard learned counsel for the parties and have gone through the record.

Serious allegations have been levelled against the petitioner with regard to maltreating, beating and non-returning of the dowry articles. Even adequate opportunities have been given to the petitioner to return the articles pertaining to his wife but he failed to do so. He failed to make the payment of gold and silver articles. Apart from it, allegations of cruelty have been levelled against the petitioner.

The remedy of anticipatory bail is extraordinary one and should be used in exceptional cases. The Hon'ble Supreme Court in *Siddharam Satlingappa Mhetre vs. State of Maharashtra and others* 2011 AIR (SC) 312 issued the following parameters for grant of anticipatory bail :-

“122. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail :

- i. The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;*
- ii. The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;*
- iii. The possibility of the applicant to flee from justice;*
- iv. The possibility of the accused's likelihood to repeat similar or the other offences.*
- v. Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.*
- vi. Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.*
- vii. The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which accused is implicated with the help of sections 34 and 149 of the Indian Penal Code, the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;*
- viii. While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;*
- ix. The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;*
- x. Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of*

grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.”

After going through the facts and circumstances of the case, this court is of the view that petitioner is not entitled to the concession of anticipatory bail.

Petition stands dismissed accordingly.

(RAJ SHEKHAR ATTRI)
JUDGE

March 12, 2019
m. sharma

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