

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

CRM-M-48354-2017 (O&M)
Date of decision: 28.2.2019

Karan Chawla

... Petitioner(s)

VERSUS

State of Haryana and another

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present: Mr. Krishan Singh Dadwal, Advocate.
for the petitioner.

Mr. Pawan Garg, AAG, Haryana.

Mr. Arnav Sood, Advocate,
for respondent No.2.

RAJ SHEKHAR ATTRI, J.

Through the instant petition, the husband is seeking anticipatory bail in case FIR No.0147 dated 10.10.2017 registered at the instance of his wife (hereinafter referred to as the complainant) for the offences punishable under Sections 323, 406, 498-A, 506, 376 of Indian Penal Code, at Police Station Women, District Ambala.

The facts necessary for disposal of this petition are that the petitioner as well as complainant-wife are advocates. They have tied the nuptial knot on 14.12.2015. It has been submitted by the complainant that on the pre-nuptial ceremonies, a sum of ₹ 20 lacs in cash was given to the petitioner and his family members, out of which, a sum of ₹ 16 lacs were spent for purchasing the car and ₹ 4 lacs were spent for renovation and furnishing of a flat at Ghaziabad. Besides this, valuable articles and

jewellery were also given, the details thereof has been give in the FIR.

The complainant had given the woeful narrations of the atrocities suffered by her from the hands of the petitioner, his family members and especially from her father-in-law.

She has, *inter alia*, alleged that on one occasion her father-in-law had sexually abused her. Apart from it, the petitioner-husband and his family members were not satisfied with the dowry given in the marriage, rather were demanding more and for this purpose, they have been maltreating and beating her. The details of the acts and conduct of the petitioner has been given in the FIR.

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

Learned counsel for the petitioner has submitted that articles of dowry have already been recovered, those are mentioned in recovery memo dated 21.12.2017 and also have been returned to the complainant; that allegations levelled in the FIR are baseless and concocted; that the petitioner has joined the investigation and he is entitled to the concession of anticipatory bail. It has also been argued that in fact the allegations of rape were found to be false and those has already been withdrawn against the father of the petitioner. In support of his contentions, reliance has been placed on the judgments of this Court in **Anil Rajput and others v. State of Haryana**; 2010 (6) RCR (Criminal) 1126 and order dated 16.10.2018 passed in CRM-M-2469-2017.

On the other hand, on behalf of the complainant, it has been vehemently contended that the petitioner in fact has concealed the material

copy of the FIR wherein the material facts has not been stated; that the offence under Section 376 IPC is not part of the instant bail application whereas he himself filed an application before the court of sessions for grant of anticipatory bail for the offence punishable under Sections 323, 406, 498-A, 506, 376 of Indian Penal Code but he deliberately and in order to obtain, interim anticipatory bail, did not mention offence under Section 376 IPC in his petition; that serious allegations have been levelled with regard to cruelty and maltreatment against the petitioner. In support of his contention, reliance has been placed on the judgment of this Court in **Bal Krishan Fauzdar v. State of Haryana**; 2018 (1) RCR (Criminal) 789.

This Court has given its thoughtful consideration to the rival contentions.

First of all, coming to the concealment of facts from this Court. It has been argued on behalf of the complainant that the father of the petitioner committed rape upon the complainant and when she complained to the petitioner, he did not take any heed, rather, treated her with cruelty. Therefore, the investigating agency also added the offence under Section 376 IPC in the FIR.

Undisputedly, the petitioner has filed an application for grant of anticipatory bail before the court of Sessions to obtain anticipatory bail for offences punishable under Sections 323, 406, 498-A, 506, 376 IPC. Said application was dismissed vide order dated 12.12.2017 (Annexure P-11). Thus, the petitioner was well aware that offence under Section 376 IPC has also been inserted in the FIR but the same has been concealed at the time of filing this petition. Later on, amended petition has been filed and the said offence added therein.

Even if it is assumed for the sake of arguments that a complete copy of the FIR was not available with the petitioner, yet the petitioner was well aware of the fact that offence under Section 376 IPC has been added. At the time of filing this petition, offence under Section 376 IPC was part of the FIR. However, on 20.12.2017, i.e., after filing of this petition, the same was deleted by the investigating agency. To the mind of this Court, the petitioner was well aware that offence under Section 376 IPC was also part of the record and he did not intentionally mention the same in the petition. Thus, the petitioner is guilty of concealment of facts from the Court.

So far as the distorted copy of the FIR is concerned, learned counsel for the petitioner has argued that in fact, he had downloaded a copy of the FIR from the website of Panchkula Police and the same has been placed on the file. To clarify this, this Court has called Additional Director General of Police who submitted that due to mistake of fact, the full contents of the FIR could not be uploaded on the website. He has placed on record complete copy of the FIR.

Serious allegations have been levelled against the petitioner and his family members for demand of dowry and treating the complainant with cruelty. Although some of the articles have been recovered during the investigation, yet the petitioner and his family members failed to account for the remaining articles, including jewellery, which were given to her at the time of the marriage-before and after its solemnization. Therefore, the custodial interrogation of the petitioner is necessary.

The remedy of anticipatory bail is extraordinary and should be used in exceptional cases. The Hon'ble Supreme Court in **Siddharam**

312 pleased to issue the following parameters:-

“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.”

However, the facts in **Anil Rajput and others (supra)** and in CRM-M-2469-2017 are distinguishable on facts.

After going through the overall scenario, no case is made out for grant of anticipatory bail to the petitioner. Accordingly, the present petition stands dismissed.

February 28, 2019
Paritosh Kumar

(RAJ SHEKHAR ATTRI)
JUDGE

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