

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

CRM-M-29867 of 2019.

Decided on:- December 04, 2019.

Amit Kairon.

.....Petitioner.

Versus

State of Haryana and another

.....Respondents.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. Atul Lakhanpal, Senior Advocate with
Mr. R.S. Chahal, Advocate
for the petitioner.

Ms. Gaganpreet Kaur, AAG, Haryana.

Mr. Aman Pal, Advocate
for respondent No.2-complainant.

HARI PAL VERMA, J.

The petitioner has filed the present petition under Section 438 Cr.P.C. for grant of anticipatory bail in FIR No.224 dated 04.06.2019 under Sections 406, 498-A and 506 read with Section 34 IPC registered at Police Station Azad Nagar, Hisar, District Hisar.

The aforesaid FIR was registered at the behest of respondent No.2 Sonika whose marriage was solemnised with the petitioner on 09.05.2017. As per the FIR, Roka ceremony was held on 03.05.2017 at DLF Club House, Panchkula. Thereafter, the marriage was solemnised on 09.05.2017. A daughter Sehaj was born from the wedlock on 01.05.2018. However, after marriage, the petitioner-husband and in-laws treated the respondent No.2-complainant with cruelty, harassment and made illegal demands from the complainant and her parents.

The complainant has mentioned many instances of cruelty and illegal demands. She has alleged that Rs.25 lakh were given to the petitioner and his father at the time of Roka ceremony as per their demand. A sum of Rs.76,000/- was spent on arrangement of function in the club and giving cash to the relatives as per the instructions of Dholu Ram Kairon (father-in-law). At the time of marriage ceremony, Rs.7 lakh were demanded by the accused whereas Rs.6 lakh were spent on hotel booking and food etc. In addition thereto, gold and silver jewellery worth Rs.7,20,000/- and wedding clothes worth Rs.2,05,000/- were given in the dowry. Ceremonial suits, utensils, household articles worth Rs.84,000/- plus Rs.60,000/- were also given in the marriage by the parents of the complainant besides Godh and Teva worth Rs.1,03,000/-.

In the month of June, 2017, the complainant joined her husband on his business trip to Shanghai, where he did not allow the complainant to talk with her parents and he even threatened to divorce her as he was having multiple affairs with the girls in the past. In July, 2017 when the complainant had gone to Leh and Ladakh with the petitioner and his other friends, the petitioner forcibly poured boiling water on her, resulting into serious burns for which she had to be hospitalised there. These incidents caused acute depression to the complainant which resulted her admission in Civil Hospital, Panchkula. In September and October, 2017 some poisonous substance was administered to her by the petitioner on the pretext of treating her for depression. Similarly, in February, 2018 the parents-in-law of the complainant raised demand of Rs.5 lakh for sending the petitioner to Canada and in March, 2018, when she was in advance stage of pregnancy, her

mother-in-law threatened her (complainant) to kill the child in case it happens to be a girl child. In April, 2018, her mother-in-law demanded a gold set for her daughter, who had made an attempt to commit suicide in Bangalore. The mother-in-law of the complainant demanded more cash and she alongwith the petitioner used to force the complainant to abort the girl child. For giving birth to a girl child, the petitioner and his parents cursed and abused her on the pretext that it was a 'bad omen' for the family. They threatened that they will not keep the complainant and her daughter in the matrimonial home. On 23.05.2018, parents of the complainant spent Rs.4 lakh on the gifts on the birth of the girl child, but still the petitioner and his parents were not happy and rather threatened the complainant that they would divorce her and will marry their son again, so that they may get a son.

The parents of the complainant, who have been bearing all this, raised an objection about this continuous harassment. In June, 2018, the accused threw her (complainant) clothes away and asked her to leave the house. They kept her without food for 3-4 days. The complainant was forced to live with her parents from 02.06.2018 to 23.07.2018. Thereafter, with the intervention of the relatives, the complainant was asked to join her in-laws, but she was again treated badly and when her husband left for Shanghai on 15.08.2018 for one month, the mother-in-law again turned the complainant out of the house on 16.08.2018. The parents of the complainant again made efforts so as to send her to matrimonial home in the end of September, 2018, but she was again harassed, beaten and kept without food by the accused including the petitioner. They used to lock her in the house and kick her if she used to sleep during the day time. She even got hurt when the accused threw

utensils upon her. On 16.11.2018, the petitioner and his mother tried to kill the daughter of the complainant by throttling her and for this reason, the complainant had to call the police on Helpline No.100. But thereafter, the accused begged pardon. Similarly, in January, 2019, she had severe infections due to cold and fever, but the petitioner and his mother forced her to sleep on the floor. Ultimately, her eardrum was damaged on 18.02.2019.

In the month of March, 2018, the accused had snatched the mobile phone of the complainant and locked her as well as her daughter in a room for 4 days without food. On 22.03.2019, she was sent back to her parental home for not fulfilling the demand of Rs.5 lakh in cash. On the basis of a self-made confession which was recorded by the petitioner in his diary, the complainant came to know that he was already married with a girl named Prerna. He also confessed that he is a gay, having multiple gay relations with other men. He was a drug addict and has been responsible for the death of one of his friend Shonit, who died due to over-dose of drug given by the petitioner. After going through these confessions, the complainant could correlate the previous threats of extra-marital relations, his attempts of unnatural intercourse with the complainant and his cruel behaviour of giving beatings when out of stock of drugs. The factum of earlier marriage was never disclosed to the complainant and it is for this reason, the accused insisted for early marriage and in this manner, the marriage was solemnised within six days of the Roka ceremony. The consent of the complainant for marriage was obtained by the accused by making false representation that the petitioner was unmarried despite the fact that he was already married with Prerna. In this manner, the accused are responsible for the offence of rape having been

committed upon the complainant by the petitioner with common intention and conspiracy of the accused i.e. the in-laws.

Learned senior counsel for the petitioner has argued that it is after the birth of daughter, the petitioner and the complainant along with their daughter had gone to Bombay and Goa by air for a period of 12 days in September, 2018. Thereafter, they had gone to Shimla, Kufri and Timber Trail for a period of about one week. The petitioner had also taken a policy of Rs.5 lakh from the HDFC Life, wherein respondent No.2 Sonika Dalal has been shown as a nominee. These facts are sufficient enough to establish that the family of the petitioner is well-placed, highly educated and there was no occasion for them to demand or accept any dowry from the complainant and her family. The complainant is a lady of suspicious nature and for this reason, differences arose between them and she left the matrimonial home peacefully along with her brother, who visited her on 22.03.2019 with a promise that she will come back after 15 days. However, after a period of 15 days, she refused to come back. The allegations against the petitioner are absolutely vague and have been made in order to harass and humiliate the petitioner and his family so that they can agree for divorce and extract as much money as possible. The demand of money from the parents of the complainant is highly unbelievable more particularly when the petitioner himself is paying salary to the complainant and had been treating her like a princess by taking her to different places from time to time. She has been afforded best of the facilities and treatment during pregnancy and all expenses on the delivery were made by the petitioner and his family.

He has further argued that the allegation that the petitioner and his family members wanted to abort the child in womb is totally misconceived as before the birth, nobody knew that the child in the womb is a girl child. Since the respondent No.2 is not inclined to join the petitioner in her matrimonial home, false allegations have been levelled against the petitioner.

Learned counsel for respondent No.2-complainant has argued that there are serious allegations against the petitioner-husband and it was legal obligation on the part of the petitioner to take care of his wife and the minor child, who happens to be his daughter. The petitioner is well-place person, but he is continuously harassing the complainant on the pretext of demand of dowry. She was treated inhumanly as the petitioner has threatened her to give divorce. In July, 2017, when the parties had gone to Leh and Ladakh, the petitioner forcibly poured boiling water on the complainant, resulting into serious burns for which she had to be hospitalised there. In this manner, severe burn injuries were caused to her. There are allegations against the petitioner that he administered poisonous substance to the complainant and, rather, forced her to abort the girl child. The complainant was deprived of food for 3-4 days and she was locked in a room alongwith small daughter. Moreover, injury was caused to the complainant while throwing the utensils on her. The accused demanded a sum of Rs.5 lakh from the complainant so as to send the petitioner to Canada. The factum of earlier marriage of the petitioner with Prerna has also not been disclosed to the complainant.

Learned State counsel has also argued on the similar lines as argued by learned counsel for respondent No.2-complainant.

I have heard learned counsel for the parties.

There is no dispute that the marriage between the petitioner and respondent No.2-complainant was solemnised on 09.05.2017 and out of this wedlock, a daughter was born to them.

On July 17, 2019, on the submissions so made by learned senior counsel for the petitioner that the matter can amicably be settled and on the oral request of learned senior counsel for the petitioner, the complainant was impleaded as respondent No.2 and the matter was referred to the Mediation and Conciliation Centre of this Court. A report dated 22.08.2019 has been received from the Mediator to the effect that it being a non-starter case as the respondent has not shown her interest in the mediation, the matter was sent back to this Court.

The parties were interacted at length so as to explore the possibility of some amicable settlement, but the complainant is consistent on her stand that she has been continuously tortured by the accused and his family. The FIR does contain detailed instances wherein she was subjected to cruelty which include demand of Rs.25 lakh at the time of Roka ceremony, threats to give divorce to the complainant on the ground that he had multiple affairs with girls in the past. There is allegation against the petitioner that in the month of July, 2017 when the complainant had gone to Leh and Ladhak with the petitioner and his other friends, the petitioner forcibly poured boiling water on her which resulted into serious burn injury for which she had to be hospitalised there.

Similarly, there are allegations that on the pretext of treating the complainant for depression, some poisonous substance was administered to

her. In February, 2018, the parents of the petitioner demanded a sum of Rs.5 lakh for sending the petitioner to Canada. In March, 2018, when the complainant was in advance stage of pregnancy, her mother-in-law threatened her to kill the child if it turns out to be a girl child. A gold set was also demanded for the sister-in-law of the complainant. In June, 2018, the accused threw the clothes of the complainant away and asked her to leave the house. They had kept her without food for 3-4 days and she was forced to live with her parents from 02.06.2018 to 23.07.2018.

Hon'ble Supreme Court in **2012(2) RCR(Criminal) 251** titled as **Jai Prakash Singh Versus State of Bihar and another** has held that neither anticipatory bail nor regular bail can be granted as a matter of rule. The anticipatory bail is an extraordinary privilege and it should be granted only in exceptional cases. The judicial discretion conferred upon the court has to be properly exercised after proper application of mind in order to decide whether it is a fit case for grant of anticipatory bail.

In **Siddharam Satlingappa Mhetre Versus State of Maharashtra and others 2011(1) RCR (Criminal) 126**, Hon'ble Supreme Court has laid down certain factors and parameters while considering the application for anticipatory bail, which are as under:

- “(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; and,*
- (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.”

In the case in hand, after evaluating the allegations as made in the FIR, this Court finds that there are repeated instances of grave cruelty at the hands of the petitioner and his parents towards the complainant. In ***Mayank Pathak Versus State (Govt. of NCT of Delhi) and another 2014(3) RCR (Criminal) 853*** Hon’ble Supreme Court has observed that the anticipatory bail was rightly rejected by the High Court in that case keeping in view the serious allegations of illegal demands of dowry made by the accused and cruel treatment. The relevant observations made in paragraph No.6 of the said judgment read as under:

“6. This Court finds it unfortunate that the parties cannot settle such a matter and the petitioner is willing to fight out the matter in court. We are conscious that the statements made in the court in the attempt for conciliation are not evidence before the court and will not be used as such. In any case, we are of the view that the allegations of cruelty and torture at the hands of the petitioner and the alleged desertion of the complainant as a result of beating, completely disentitle the petitioner to any consideration for anticipatory bail.”

Though at one stage, efforts were made to amicably settle the dispute and the complainant in order to protect the interest of the minor daughter and for herself had asked for separate house i.e. a flat from the properties owned by the petitioner, but the petitioner has not come forward to accept this offer. The complainant has also pointed out that the petitioner is well-placed and his income is more than Rs.30 lakh per year. Though learned senior counsel for the petitioner has disputed the earning of the petitioner and,

rather, submitted that the income of the petitioner is \$ 3000 per month, which comes around Rs.2,10,000/- per month and out of this amount, he has to manage his office.

The complainant has alleged that she has been treated in a very scabby conditions throughout her stay in the matrimonial home and it is in the extreme situation, she had to resort to the registration of present FIR.

Thus, the allegations against the petitioner being serious, this Court finds that no ground is made out to grant anticipatory bail to the petitioner.

Accordingly, the present petition, being devoid of any merit, is dismissed.

It is made clear that the observations made hereinabove shall not be construed as an expression of opinion on the merits of the case and is confined to the decision of the present application for anticipatory bail only. The trial Court shall not be influenced with the observations made hereinabove in any manner.

December 04, 2019

Yag Dutt

**(HARI PAL VERMA)
JUDGE**

Whether speaking/reasoned: Yes

Whether Reportable: No