

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

CRM-M-64753-2018

Date of decision: January 17, 2019

Faninder Gautam

....Petitioner

Versus

State of Punjab and another

....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present: Mr. Sudarshan Moudgil, Advocate and
Mr. Harsh Chopra, Advocate
for the petitioner.

Mr. V.G. Jauhar, Senior DAG, Punjab.

Mr. Vineet Chaudhary, Advocate
for respondent No.2.

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.128 dated 03.11.2018, under Sections 406, 498-A of the Indian Penal Code (for short 'IPC') and Section 12 of the Protection of Women from Domestic Violence Act, 2005, registered at Police Station Division No.2, Pathankot.

Briefly stated, petitioner is husband of the complainant Smt. Akanksha Sharma. It is alleged that petitioner along with his family members had been taunting, maltreating the complainant for demand of dowry. It is alleged in the FIR that huge articles of *istridhan* given at the time of shagun ceremony and also at marriage.

It is specifically mentioned in Para Nos.6 and 7 which are reproduced hereunder:-

6. *“That immediately on arrival in my matrimonial home my complete jewelry was taken by my mother in law comprising of two gold sets, two chains, two earring sets, two kada, four bangles, four rings. All these items were weighing about 20 tolas of gold valued about Rs.7,00,000/- which is still in her custody having been entrusted to her by me as trust. That inspite of my asking on number of occasion I was told that I should use artificial jewlery as there is a great risk to life in case it is worn on social function in Delhi and for daily use and my said items have been misappropriated by my brother in law. The dowry articles were entrusted with the accused at Pathankot.*
7. *That my father in law Shri Sudhir Gautam who used to pass dirty remarks with foul word saying that he has committed a blunder by marrying his son at Pathankot. It was expected that their son should be given at least Rs.10,00,000/- in case and a car as the girl was working and earning for the past about 6-7 years and both my parents were government employees. My father in law used to say 'naa Shakal hai naa akal hai, hum issue yaha mahi tikne dengea ur nikal denge' and on certain occasions when a small drop of milk used to get spilled out while filling glasses, my husband and mother in law used to shout at me with abusive language and comment on me that 'iski maa ne isse kuch nahi sikhaya hai, issue to ache anpad naukar kam karte hai' and has not brought anything in dowry.”*

The more disturbing facts are mentioned in Para Nos.19 to 24 of the FIR which are reproduced as under:-

19. *“Then the marriage of my younger sister was fixed for 12.12.2016 so I wanted to go and spend some*

time with my sister later on I may not be able to spend time with my sister as I was already in the advance stage of pregnancy and after the delivery of the child I may not get an opportunity to spend time together, but after lot persuasion I was permitted to go only for one week where again my husband created a scene refusing to join the marriage ceremonies thereby causing great insult and humiliation in the presence of my parents and their relatives.

20.As my expected day of delivery was in the last week of April 2017 I used to visit doctor to ensure proper care and health of my child as per the direction of my husband and in law. That on 12.04.2017 all my testes were got conducted i.e. TLC, Kidney Function Test (KFT) and other related tests on the instruction of the doctor which were all found within normal limit. The normal delivery took place on 13.04.2017 at Singhal Hospital C-40 street No.09, Sadh Nagar, Palam Colony New Born on 13.04.2017. My husband and my in law were shocked hearing the news of the girl child and abused me for not producing a boy I was shocked at the thought of my husband, in law that who inspite of being educated were accusing me of not producing a male child.

21.That after delivery I was advised by the doctor that everything was ok and I will be discharged next day, But i was not discharged, as I was loosing blood due to negligency and some procedural and some procedural lapses by the doctors of the hospital and despite being in ICU nobody noticed it after 2 hours, I heard nurse screaming that I was lying in the pool of blood and condition is very critical. The attending doctor came back and put the stitches again during this time I had no idea where my husband and in law were. No one was present at the hospital and they had gone home to make me die in the hospital. My parents were in the train on the way to Delhi in the

morning due to hospital negligency and carelessness, I lost bloods to a point where doctor was arranged by my husband. The blood was arranged by my husband. Immediately after blood transfusion, I had severe pain in my abdomen and lower back. I kept on telling this to doctor. But the hospital ignored all my request. I kept on lying in this condition for a day. My condition became even worse and oxygen level in the body dropped to critically low levels as my lungs were filled with fluids as per my husband he got a call from the doctor at mid night to shift to me a different hospital. After sometime, I found myself in ICU of the hospital where upon, the doctor told my husband that she should be taken to some big hospital. At midnight of 16th/17th April they are unable to treat me since my condition had become very serious and was unable to pass urine as well as suffering from breathing problem I was later on taken to Mata Chanban Devi Hospital Delhi for further treatment when it was diagnosed that my both kidneys had suffered acute injury due to blood transfusion and my body had contacted septicemia (which is a life treat ending blood transfusion) and I was required to be put on dialysis continuously. I was immediately put on dialysis were not functioning. My husband had brought blood from some wrong place for the best reasons known to him.

22. That I was kept in the hospital for three weeks and after 10 days it was confirmed by doctors that I have suffered acute cortical necrosis. It technically means my kidneys will never work again due to severe blood transfusion reaction. During this time as well as my parents and I were abused and humiliated even in the hospital. My husband and mother in law while being in ICU told me that they will not be spending any more money as that as they have spent enough and told me to die my own after this, my

husband stopped coming to the hospital. He also did not show any concern for my health and also did not allow me to see my child after her birth as I developed medical problem in the hospital due to the negligency and ill treatment by the doctors of the Singhal Hospital. I made number of request to my husband to show me child so that I can nurse and look after my child and also feel her presence but I was told that we will only get you the child in case you leave us forever and give divorce to my husband. My husband and in law as she will not be able to bear any child in future and they will not be able to continue the Vansh of the family.

23. That over the last one year my child has been kept away from me and I have not been shown my child even for one moment after delivery till date, child must have grown over one year and I am suffering from the mental and physical torture due to separation of child from her mother.

24. That my husband has totally neglected and disowned me and has also failed to look after my medical treatment for the past one year in spite of earning about Rs.2,00,000/- (Rs. Two Lakhs) per month. He had clearly told me that he will not spend any money on her treatment hence the complete expense on the treatments was born by my parents and still being borne from their pension and financial assistance from my elder brother and my younger sister and her husband.”

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.”

The petitioner is the husband of the complainant. However, serious allegations have been levelled against him. To the mind of this court, in the peculiar circumstances of the case, petitioner is not entitled to the concession of anticipatory bail.

Petition stands dismissed accordingly.

(RAJ SHEKHAR ATTRI)
JUDGE

January 17, 2019
m. sharma

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