

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

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IN VIRTUAL COURT

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**CRM-M No. 31692 of 2020
Date of decision : 8.10.2020**

Sunita and another

.....Petitioners

Vs.

State of Haryana

.....Respondent

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. S.S. Khurana, Advocate, for the petitioners

Rajbir Sehrawat, J. (Oral)

The present petition has been filed by the petitioner under Section 438 Cr.P.C for grant of anticipatory bail in case FIR No.57 dated 18.8.2020, registered under Sections 498A, 406, 506, 34 IPC, at Women Police Station, Rewari.

The allegations against the petitioners, who are mother-in-law and husband of the complainant, are that the marriage of the complainant was solemnized with petitioner No.2 on 28.2.2020. In the marriage an amount of Rs.12 lakhs was spent. However, immediately after the marriage, the petitioner started taunting and harassing the complainant by saying that even the persons residing in slums would have perform the marriage in a better manner. Since the complainant was repeatedly harassed, therefore, she had informed her family members regarding this. Accordingly, in a brotherhood panchayat, the petitioners even accepted their mistake and assured the complainant to keep her properly in her matrimonial house. However, on 23rd March, 2020 once again,

the petitioners threatened and harassed the complainant. Petitioner No.2-husband twisted the hand of the complainant and taunted her as to why she had not brought more dowry and he tried to press her throat. At that time, the mother-in-law i.e. petitioner No.1 also came screaming and said that they will keep the complainant on the edge of shoes. It was further threatened by the petitioners that they will not allow the complainant to live peacefully unless their demands of dowry are met. Torture caused by the petitioners did not stopped at that place. Hence, again on 5.4.2020 and 14.4.2020, the petitioners gave beatings to the complainant. Petitioner No.2 again demanded a mobile phone worth Rs.50,000/-. While so harassing and threatening, the petitioners proclaimed that petitioner No.2 was married earlier also and the earlier wife was also thrown out of the house by them within a period of 15 days and that the complainant would also meet the same fate. With this harassment, the complainant was shunted out of her matrimonial home. Accordingly, the FIR has been registered against the petitioners.

The counsel for the petitioners has submitted that the case against the petitioners is totally baseless. Petitioner No.2 was married earlier as well. However, the said marriage was dissolved by a decree of mutual divorce. Therefore, the petitioners would not have demanded any dowry during the second marriage. The marriage was solemnized in a simple manner. There had never been any harassment of the complainant. With the similar allegations, the complainant had named the father-in law, as well as, sister-in-law. However, the police have found the story of the complainant to be partly wrong qua them and the police have found the father-in-law and sister-in-law to be

innocent. Still further, it is submitted that, in fact, the complainant did not want to stay with the petitioners and she wanted a divorce with mutual consent. One conversation to this effect, in which the uncle of the complainant is heard saying so, is available with the petitioners. Hence, the present FIR has been registered as a pressure tactics.

Notice of motion.

Mr. Rupinder Singh Jhand, Addl. AG, Haryana, accepts notice on behalf of the State.

The counsel for the State, being instructed by HC Mamta, has submitted that there are specific allegations against the petitioners. As per the allegations, the petitioners did not disclose the factum of the first marriage to the complainant. Despite that, although the complainant made her best effort to settle herself in the matrimonial home, however, the petitioners harassed the complainant with repeated demands of dowry. All these facts have come on record. It is further submitted that the entire harassment on account of dowry has resulted within two months of the marriage. The police are yet to effect recoveries from the petitioners. Hence, the petitioners do not deserve any concession of anticipatory bail.

Of course the accused as a citizen also has a right to life and liberty; as guaranteed by the Constitution of India. However, this right can very well be curtailed in accordance with the procedure established by law. In case of criminal investigation, the normal procedure prescribed for curtailing the right to life and liberty, as prescribed under Cr.P.C.; is that the investigating officer can arrest the accused even without warrant. Therefore, to ensure that

an innocent person is not unduly harassed by the investigating agency, an extra-ordinary power has been conferred upon the Courts under Section 438 Cr.P.C. However, this power is so extra-ordinary that it is not even available in some some part of the country qua all the offences and under some special statutes qua some specified offences, this power is not available even throughout the country. Hence, this power has to be exercised by the Courts with due circumspection. This power can be exercised by the Courts only when the facts and circumstances of the case lead, predominantly, towards the ex-facie innocence of the accused, coupled with the fact that the investigation of the case would not be unduly hampered by grant of protection to the accused.

Having heard learned counsel for the parties and having perused the paper book, this Court finds that there are specific allegations against the petitioners qua repeated demands of dowry and harassment of the complainant on that account. There are allegations of beatings and taunting, which are alleged to have made the life of the complainant as miserable. The complainant is even alleged to have been shunted out of the matrimonial home on account of demand of dowry. Still further, this Court finds that the police have not roped-in all the members of the family merely on the complaint of the complainant. The police themselves have found non-involvement of the father-in-law and sister-in-law of the complainant and, at this stage, the police are not proceeding against them. Therefore, it is apparent that the police are not involving the petitioners merely on false allegations. In view of these facts, this Court does not find any ex-facie innocence on the part of the petitioners,

vis-a-vis, the allegations levelled against them. Still further, this Court finds substance in the arguments of learned counsel for the State that recoveries are yet to be effected from the petitioners. Therefore, if the petitioners are protected against arrest then free and fair investigation of the case shall be hampered. Hence, this Court does not find this to be a fit case to exercise its powers under Section 438 Cr.P.C, so as to protect the petitioners against their arrest.

In view of the above, the present petition is dismissed.

(RAJBIR SEHRAWAT)
JUDGE

8.10.2020

Ashwani

Speaking/Reasoned	:	Yes/No
Reportable	:	Yes/No