

S.No.108

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

CRM-M-34189 of 2020 (O&M)

Date of Decision:28.10.2020

Sahil Sodha

.....Petitioner

Vs.

State of Punjab and another

.....Respondents

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IN VIRTUAL COURT
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CORAM:- HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present:- Mr. Achin Gupta, Advocate for the petitioner.

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.286 dated 07.08.2020 registered under Sections 406/498-A/34 IPC at Police Station City Faridkot, District Faridkot.

The allegations against the petitioner, in brief, are that the marriage of the complainant was solemnised with the petitioner on 29.01.2019. However, after some time, the present FIR was got registered by the complainant- wife with the allegation that she was doing job in Punjab National Bank. An amount of Rs.27/28 lakhs was spent by her parents in the marriage and sufficient dowry, including the jewelry, was given. However, the accused; including the petitioner; were not satisfied with the dowry. One maternal aunt of the petitioner also used to frequently visit the family member of the petitioner. They started taunting the petitioner that she had not brought a car in the marriage. They started demanding Rs.15 lakhs in cash in lieu of the car. The parents of the

complainant even informed the middle-man, however, even on being dissuaded by him, the in-laws of the complainant insisted for more dowry and said that they had been insulted in the society because of not giving car in the marriage. They further exhorted that unless their demand is met, they will not make the complainant happy. In pursuance of their designs, the accused used to beat the complainant. The husband of the complainant, namely, the present petitioner; used to give beatings to her after consuming liquor and he used to threaten her with divorce. On 21.01.2020, at 3 o'clock, the petitioner gave beatings to the complainant. On this, the complainant informed her parents and relatives. They came to the house of the petitioner. However, the family of the petitioner flatly refused to keep the complainant happy. Several attempts were made even thereafter to make the accused understand. But, they kept on harassing and beating the complainant for divorce. Feeling totally helpless; as per the demands of the in-laws of the complainant, she agreed even for divorce. However, despite giving in writing, they refused to pay the agreed amount. So the divorce proceedings could not be completed. In their design to cause extreme harassment upon the complainant, on 05.03.2020, the petitioner; along with his friend Vikram and one another unidentified person, even outraged the modesty of the complainant. Regarding this, the complainant lodged another FIR. The complainant was shunted out of her matrimonial house. Thereafter, on 21.06.2020, the complainant along with her father and one Rishu went to her in-laws for taking her dowry articles. However, they refused to hand over the same and thus misappropriated the said article. Hence, the present FIR was registered.

While arguing the case, learned counsel for the petitioner has submitted that the case against the petitioner is totally concocted. The allegations against the petitioner are totally vague and non-specific. Still further, it is submitted that the complainant is serving in the Bank whereas the petitioner is under-graduate. Therefore, it is the arrogance of the complainant which has resulted in break-down of the matrimonial house. Still further, it is submitted that when the complainant had left the house; at that time, she was pregnant. As per the terms of the compromise, the child was to be given birth by the complainant. However, she aborted the child. On account of that, the petitioner has even filed a criminal complaint against the complainant-wife. Therefore, the petitioner did not pay the agreed amount and as a result, the mutual divorce proceedings could not succeed. Still further, it is submitted that the petitioner is ready to bring her back and he has already filed a petition under Section 9 of Hindu Marriage Act, 1955. The petitioner would join the investigation. Hence, the petitioner deserves to be protected against his arrest.

Notice of motion.

Mr. Randhir Thind, DAG, Punjab, accepts notice on behalf of the State. Mr. Jagjot Singh Lalli, Advocate has pur in appearance on behalf of the complainant.

Learned State Counsel being assisted by learned counsel for the complainant has submitted that there are specific allegations against the petitioner qua causing harassment to the complainant on account of demand of car. As per the allegations, there have been continuous harassment upon the complainant on account of dowry. Not only this, the petitioner has

shown depravity of his character by outraging the modesty of the complainant in connivance and collusion with his other friends. It is also submitted that the nature of the petitioner can very well be gathered by the fact that even after pressing for divorce by paying the money to the complainant, when the complainant agreed for the same, the petitioner has even backed out of the same. Regarding the allegations of abortion of the child, it is submitted by the counsel for the complainant that it was an unfortunate miscarriage. The petitioner had made a complaint to the Police in this regard. After inquiry, even the Police had found no substance in the allegations of the petitioner. Hence, the complaint filed by the petitioner in this regard was consigned to the records by the Police. The issue of abortion has unnecessarily been introduced to conceal his misdeeds.

No doubt, 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 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.

Coming to the facts of the present case, it is evident that the marriage of the petitioner was solemnised with the complainant on 29.01.2019 only. Within a period of less than one year, the entire alleged harassment has happened. Being husband, it was the responsibility of the petitioner to ensure that the wife, who had come from other place; gets adjusted in the family. However, as per the allegations, instead of ensuring that, the petitioner started harassing the complainant on account of dowry. There are specific allegations qua demand of car or the amount of Rs.15 lakhs for purchase of the car. There are also specific allegations qua giving beatings and outraging the modesty of the complainant, for which the petitioner is even facing a separate FIR. Therefore, this Court does not find any ex-facie innocence on the part of the petitioner vis-a-vis the allegations levelled against him. Still further, this Court finds that as per the allegations, the dowry articles are yet to be recovered. Furthermore, the Police may required the custodial interrogation of the petitioner to unearth the further dimensions of the crime, as well as, for collection of the evidence qua the allegations levelled by the complainant. Hence, this Court is of the view that if the petitioner is protected against his arrest at this stage, then the free and fair investigation of the case would also be hampered. Hence, this Court does not find this to be a fit case to exercise its extra-ordinary powers under Section 438 Cr.P.C.

In view of the above, finding no merit in the petition, the same is dismissed.

However, it is clarified that nothing said here-in-above shall affect the merits of the case during the trial, if any.

October 28, 2020

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(RAJBIR SEHRAWAT)

JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No