

\$~11

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 14.01.2020

+ BAIL APPLN. 911/2019 & CRL.M.(BAIL) 657/2019& CRL.M.A.
34196/2019 & 40070/2019

PRASHANT GUPTA

..... Petitioner

Through Mr.Mohit Gupta, Adv. with
Mr.Sidhant Nath, Mr.Divij Soni,
Mr.Shiven Khurana & Mr.Sarvesh
Rai, Advs. with petitioner in person.

versus

STATE OF NCT OF DELHI & ANR

..... Respondents

Through Mr. Hirein Sharma, APP for State.
SI Manoj Kumar PS Sarita Vihar.
Ms.Shilpa Sharma, Adv. with
Mr.Narender Singh, Adv. for R-2
with R-2 in person.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T (O R A L)

1. The present petition is filed under section 438 of Cr.P.C. to grant anticipatory bail to the petitioner in pursuance to FIR No.423/2018 registered at Police Station Sarita Vihar for the offences punishable under sections 498A/406/34 of the IPC.
2. For the aforesaid relief, the petitioner moved three applications before

the sessions court and the same were dismissed vide orders dated 24.01.2019, 12.03.2019 and 02.04.2019.

3. The case of the prosecution is that the petitioner and the complainant were working in the same company based in Faridabad (Haryana) from 2012. In the year 2015, they came close to each other and became good friends and finally they got married on 26.11.2016. After one year, certain disputes arose between the petitioner and the complainant. The parents of the petitioner made sarcastic remarks about the dowry items/stridhan given in the marriage. The petitioner insulted the complainant, slapped her and twisted her arms. Consequently, the complainant was mentally and physically harassed by the petitioner and his parents. The petitioner had filed a divorce petition before the family Court in the year 2018. Thereafter, the complainant had filed a complaint by alleging certain allegations against the petitioner and his parents before the Police Station Sarita Vihar, New Delhi, which culminated into an FIR bearing No. 423/2018 dated 31.12.2018.

4. Counsel for the petitioner submits that the petitioner had already joined the investigation on various dates i.e. on 31.01.2019, 13.03.2019, 23.03.2019 and 28.03.2019. The divorce petition is pending between the

petitioner and the complainant since August 2018, and present FIR, which was registered against the petitioner on 31.12.2018, is nothing but a counter blast of the divorce petition to pressurise the petitioner and to create undue pressure on whole family of the petitioner. The petitioner is working as Civil Engineer in a company in Gurugram, Haryana. He is the only bread earner of his old parents since his parents are living in Kota, Rajasthan and petitioner is living in Gurugram, Haryana. Petitioner has already paid Rs.6,60,000/- to the complainant. The arrest of the petitioner would destroy his social status and he will lose his job also. He will join further investigation as and when called by the IO.

5. In addition to above, the complainant had been using ATM credit card of petitioner for the purchase of household items before filing the complaint. Learned counsel further submits that as per allegations, the amount transferred in the account of the petitioner is nothing but to share in the household. Therefore, there was no demand from the petitioner for his family and the said amount was paid by the complainant out of her own wish, therefore, the present petition deserves to be allowed.

6. This Court has no hesitation to mention here that in the case of 498-A/406 IPC, in majority of the cases, this court has granted anticipatory bail

to the accused persons. In the present FIR, anticipatory bail of father and mother of the petitioner has been dismissed by this court vide order dated 18.01.2019 in Bail Appln. Nos.109/2019 & 110/2019 by detailed order which is reproduced as under:

“The petitioners seek anticipatory bail. They are accused of the cruelties meted out to the complainants i.e. wife and daughter-in-law of the petitioners respectively. The latter alleged that approximately Rs. 40 lacs have been spent on the marriage and many other articles were also gifted to the petitioners. The petitioner-husband Rajendra Prasad Gupta has since been absconding. However, the learned counsel for the petitioners submits that the husband is not absconding. His anticipatory bail application is pending adjudication in the Saket Courts. The learned counsel for the petitioners submits that the innocent in-laws do not live with the young married couple and charges against them are false and concocted. Nevertheless, the petitioner/mother-in-law is ready and willing to offer an amount of Rs. 5 lacs to prove her bona fides.

Mr.G.M. Farooqui, the learned Additional Public Prosecutor strongly opposes the bail on the ground that the said amount being offered is dishonest because what has been transferred by the complainant/ daughter-in-law is about Rs. 11 lacs, by way of banking transactions. He submits that there were demands of many items, including, a Honda City car. The said vehicle has been bought from the monies paid by the complainant and even now it is in the custody of the husband and otherwise being used for the benefit of the in-laws. Furthermore, the complainant has been paying Rs.24,500/- per month for a rented accommodation since November, 2017. Her personal belongings valued at Rs. 16,55,000/- are still in

*the custody of the petitioners, however, the same have been denied by them except to the value of Rs. 50,000/. He further submits that complicity of the petitioners is writ large and custodial interrogation of the petitioner/mother-in-law is necessary to know the whereabouts of her son/husband of the complainant. The learned counsel for the petitioners submits that these allegations are nothing but in retaliation to the petition filed by her son against the complainant. He also relies upon the judgment of this Court in **Chetan Kapoor @Vikas vs. State** in Bail APPLN. 501/2015 decided on 11.09.2015, to the effect that these proceedings under section 438 Cr.PC. are not in the nature of recovery proceeding.*

The Court is of the view that these proceedings can hardly be considered as recovery proceedings. The charges against the petitioners are serious in nature.

In view of the above, no case is made out for grant of anticipatory bail. Accordingly, the petitions are dismissed.”

7. The fact remains that this court had interacted with petitioner and respondent no.2 in chamber on 05.09.2019 in the presence of Ms.Nidhi Singh, Delhi Judicial Officer, who was on training and was attached with this court. During interaction, petitioner stated that he was in love with respondent no.2 for one year before marriage and either during that period or after marriage, they did not have sexual intercourse and whenever he tried to do so, she always refused and till date, no physical relations between them, whereas, the respondent no.2 (wife) stated that during their affair and after

marriage, they have had sexual relations and she is capable of doing so. She further stated that when the petitioner made such allegation that she is not capable of sexual intercourse, she approached AIIMS on the advice of IO and got a medical certificate which is in possession of IO of the case.

8. It is pertinent to mention here that on asking the respondent no.2 whether she is interested to stay with the petitioner as wife, she replied in affirmative, whereas, the petitioner stated that since she is not capable of sexual intercourse, he cannot continue this relation.

9. Based upon the allegation made by petitioner, this Court directed the Medical Superintendent of AIIMS to depute one lady gynaecologist to examine respondent no.2 for the aforesaid purpose and the same direction was issued to the Medical Superintendent of RML Hospital. Accordingly, respondent no.2 was directed to appear before the Medical Superintendent of AIIMS on 07.09.2019 at 10:00 a.m. and at 03:00 p.m. before the Medical Superintendent of RML Hospital for examination. IO of the case was directed to collect the report from the concerned Medical Superintendent and produce the same before the court.

10. On 13.09.2019, matter was taken up and pursuant to order dated 05.09.2019, reports from both the hospitals were received, whereby it is

reported that respondent no.2/complainant is capable of having sexual intercourse.

11. On receipt of the report, petitioner agreed to stay with respondent no.2 as husband at the place where respondent no.2 was staying, i.e. E-84, Top Floor, Sarita Vihar, Delhi. Thereafter, they stayed together for 24 days as husband and wife.

12. The petitioner is personally present in court today and has admitted that during stay of 24 days, they had sexual relations. If the petitioner is admitting that they had sexual intercourse during aforesaid period, then this court cannot believe that the petitioner and respondent no.2 did not have sexual relations atleast after marriage. Thus, he has bluffed and misled this court by making a wrong allegations against respondent no.2.

13. As stated above, in majority of the cases, this Court has granted anticipatory and regular bail but keeping in view the conduct of the petitioner, I am not inclined to grant anticipatory bail to the petitioner.

14. Moreover, dowry articles are yet to be recovered from petitioner.

15. The petition is dismissed.

16. It is made clear that the Trial Court shall not get influenced by the observations made by this court in dealing with the present bail application.

17. Pending applications stand disposed of.

(SURESH KUMAR KAIT)
JUDGE

JANUARY 14, 2020

ab

