

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

CRM-M-9515-2021

Date of decision:-1.3.2021

Baldev Sharma

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Vivek Goyal, Advocate
for the petitioner.

Mr.Tanuj Sharma, AAG, Haryana.

Mr.Arun Gupta, Advocate
for the complainant.

H.S. MADAAN, J.

This petition under Section 438 Cr.P.C. for pre-arrest bail has been filed by the petitioner – Baldev Sharma, aged about 53 years, resident of village Kami, Tehsil and District Panchkula, an accused in FIR No.41 dated 21.1.2021, under Sections 406, 498-A, 306, 120-B, 354, 376, 511 IPC, registered with Police Station Shahabad, District Kurukshetra.

Briefly, the facts of the case as per the the prosecution story are that criminal machinery in this case was set into motion by

complainant Ritu daughter of Sh.Suresh Kumar, resident of village Yaara, Tehsil Shahabad, District Kurukshetra, who in the written complaint submitted by her to Superintendent of Police, Kurukshetra sought taking of legal action against her father-in-law – Baldev (present petitioner), mother-in-law – Kusum, brother-in-law – Harish contending that she was married with Mahesh Kumar son of accused Baldev and Kusum on 4.11.2011 and the couple was blessed with two children i.e. a son aged about 8 years and a daughter 2 years old; the parents of the complainant had given sufficient dowry at the time of her marriage with Mahesh Kumar and complainant along with her husband and children had been living happy life but the complainant was taunted and harassed by her father-in-law Baldev and mother-in-law Kusum for bringing less dowry and they used to demand Rs.5 lakhs; the husband of the complainant did not like such attitude of his parents and tried to prevail upon them not to raise such type of demands but to no effect, rather Baldev – father and Kusum – mother and Harish – brother of Mahesh Kumar turned against him picking up quarrels with Mahesh Kumar and holding out threats to him; the complainant and Mahesh Kumar along with their children were asked to shift to one room on the top floor of the house; Mahesh Kumar demanded his share in the property from his parents stating that on being given his share, he would shift to some other place but accused did not do so, rather parents of Mahesh Kumar disinherited him; Mahesh Kumar went in depression; all the accused kept on taunting Mahesh Kumar that he was a henpecked husband; on 16.11.2020, accused gave beatings to Mahesh Kumar and abused him; the accused asked Mahesh Kumar that it

was better for him to die rather than live as slave of his wife; Mahesh Kumar on account of such beatings given by accused and taunts made by them, consumed celphos poison on that very day at about 2:00/3:00 p.m.; he was taken to local hospital from where he was referred to PGI, Chandigarh but he could not survive; the Corona test performed upon Mahesh Kumar at PGI, Chandigarh; he was found to be Corona positive, as such his last rites were performed there; the accused had apologized at that time and given assurance to take care of complainant and her children; as such, father of the complainant did not disclose all the things to the police and he persuaded the complainant not to do herself also. However, after few days of death of Mahesh Kumar, accused again started abusing her and after 15 days, they threw the complainant and her children out of the matrimonial home, refusing to allow them to return to the matrimonial home. Though father of the complainant had convened several Panchayats to persuade the accused not to do so. According to the complainant, her father-in-law Baldev had tried to have physical relations with her on several occasions inasmuch he used to send son of complainant to ground floor and did bad acts with her. He would rub his hand on her body and used to say that if she fulfilled his wishes, then he would allow her to live in his house, otherwise he would not permit the complainant to reside in his house. The complainant disclosed such incidents to his mother-in-law but she rather supported Baldev. According to the complainant her brother-in-law Harish also misbehaved with her on several occasions kissing her while she was standing and tried to commit rape upon her, threatening her with a knife. The complainant ultimately

disclosed all those incidents to her mother. In the criminal complaint submitted by her to the police, she sought taking of legal action against the accused. After registration of the formal, FIR, the investigation in the case started.

Apprehending his arrest in this case, the present petitioner had approached the Court of Sessions seeking grant of pre-arrest bail by filing an application, which was assigned to learned Additional Sessions Judge (Fast Track Special Court for the offences of Rape & under POCSO Act), Kurukshetra. However, his such request was declined by learned Additional Sessions Judge (Fast Track Special Court for the offences of Rape & under POCSO Act), Kurukshetra vide detailed order dated 16.2.2021. As such, the present petitioner has approached this Court by way of filing the instant petition asking for the similar relief.

Notice of the petition was issued to respondent – State. Mr. Tanuj Sharma, AAG, Haryana has appeared on behalf of respondent – State and accepts notice on its behalf. Mr. Arun Gupta, Advocate has also appeared for the complainant. They oppose the petition.

I have heard learned counsel for the parties besides going through the records.

Pre arrest bail is a discretionary relief and is to be granted in exceptional cases and not in routine. It is meant to save the innocent persons from harassment and inconvenience and not to screen the culprits from arrest and custodial interrogation.

Here there are very clear and specific allegations against the present petitioner by name, which are quite grave and serious in nature

coming within the mischief of offences under Sections 498-A, 306, 354, 376 and 511 IPC. Although learned counsel for the petitioner has argued that such allegations levelled by the complainant are wrong and she has done so as a pressure tactic to get share in the property from the petitioner but I am not convinced by such assertions. A young woman having lost her husband would not blame her father-in-law without any rhyme or reason. Furthermore, she would not invite stigma to her moral character levelling allegations on her father-in-law of outraging her modesty and committing rape upon her. No normal woman would go to that extent just for the purpose of getting share in the property from the father of her deceased husband.

Learned counsel for the petitioner has raised several contentions stating that the complainant along with her deceased husband and children were residing separately in a separate portion of the house and petitioner had no concern with them; petitioner/accused had made a complaint dated 23.4.2019 to DCP, Panchkula against the present complainant; Mahesh Kumar had committed suicide fed up with the harassment and maltreatment meted out to him by his own wife, the complainant etc.

However, these contentions raised by learned counsel for the petitioner touch the merits of the case. It shall be dealt with by the trial Court while holding the trial and are not required to be dealt with in detail by this Court while determining the question whether the petitioner is entitled to pre-arrest bail or not. Here keeping in view the gravity and seriousness of allegations against the petitioner, the requirement of his

custodial interrogation for complete and effective investigation is called for and no case for grant of pre-arrest bail to him is made out. In case custodial interrogation of the petitioner is denied to the investigating agency that would leave many loose ends and gaps in the investigation affecting the investigation being carried out adversely, which is not called for.

In case of *State represented by the C.B.I. Versus Anil Sharma, 1997(4) R.C.R.(Criminal) 268*, Hon'ble Apex Court had observed that custodial interrogation is qualitatively more elicitation orientated than questioning a suspect who is on anticipatory bail, in a case like this interrogation of suspected person is of tremendous advantage in getting useful informations.

Finding no merits in the petition, the same stands dismissed accordingly.

It may be mentioned here that nothing discussed hereinabove shall have any bearing on the merits of the case.

1.3.2021
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No