

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CRM-M No.12750 of 2019 (O&M)

Date of Decision:05.10.2021

(Heard through VC)

Bhawna Pundir and another

...Petitioners

Versus

State of Haryana and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Ms. Savita Rana, Advocate
for the petitioner.

Ms. Deepshikha Chauhan, AAG, Haryana.

None for respondent No.2.

JAISHREE THAKUR, J. (ORAL)

CRM No.30927 of 2021

Application is allowed.

Annexures P-9 to P-11 are taken on record.

CRM-M No.12750 of 2019

This is a petition that has been filed for cancellation of regular bail granted to respondent No.2 by an order dated 08.01.2019 passed by the Additional Sessions Judge, Karnal in FIR No.965 dated 23.08.2018 registered under Sections 323, 34, 354, 498-A, 506, 511 IPC at Police Station Sadar Karnal, District Karnal.

In brief, the facts are that an FIR was registered under Sections 323, 34, 354, 498-A, 506, 511 IPC at Police Station Sadar Karnal, District Karnal against respondent No.2 herein. He had applied for regular bail, which was allowed and while deciding the bail application, the contention

of respondent No.2 was taken into account that a divorce petition under Section 13-B of the Hindu Marriage Act had been filed by both parties before the Family Court on 11.09.2018 wherein the complainant, petitioner herein, had suffered a joint statement with respondent No.2 that she was residing separately and all issues regarding dowry articles as well as *ishtridhan* and maintenance had already been settled. Taking into the account the fact that petition under Section 13-B of the Hindu Marriage Act was filed and that respondent No.2 had been in custody and the trial would take sufficient long time to conclude, the Additional Sessions Judge deemed it a fit case for respondent No.2 to be admitted to bail.

Learned counsel appearing on behalf of the petitioner-complainant would submit that the bail had been granted to respondent No.2 by taking into account the fact that petition under Section 13-B of the Hindu Marriage Act was pending, however, the said petition never fructified and the same was dismissed. It is also argued that the investigation done by the police is shoddy as there is enough evidence on record to substantiate the plea that the petitioner had suffered injuries leading to an abortion. It is argued that the Additional Sessions Judge had made specific mention that there was no medical evidence on record to substantiate as to why Section 313 IPC has been added, while allowing the bail application and therefore, the bail granted to respondent No.2 ought to be cancelled.

Learned counsel appearing on behalf of the respondent-State would argue that despite the observation having been made by the Additional Sessions Judge, Karnal while allowing bail, Section 313 IPC had been added in the challan presented by taking into account the medical

evidence on record. It is also submitted that after the regular bail had been allowed to the respondent No.2, he did not misuse the same.

There is no representation for respondent No.2.

I have heard learned counsel for the parties and have perused the documents placed on record, which pertain to divorce petition filed under Section 13-B of the Hindu Marriage Act as well as the statements recorded therein. Admittedly, regular bail was applied for after respondent No.2 had been arrested and one of the consideration for allowing bail was that a petition under Section 13-B of the Hindu Marriage Act was pending. In fact, the petition under Section 13-B of the Hindu Marriage Act had been filed seeking decree of divorce by mutual consent before the District Judge (Addl. Family Court), Karnal wherein both parties got their first motion statement recorded on 11.09.2018 that all issues regarding dowry articles, *ishtridhan* and maintenance had already been settled and nothing remains due against each other. However, the petitioner-complainant herein suffered a statement on 27.03.2019 that she does not want to give divorce to respondent No.2, consequent to which the petition under Section 13-B of the Hindu Marriage Act, 1955 was dismissed and the file was consigned to record room. It is to be noted that the first motion statement was recorded on 11.09.2018 and the bail application was allowed on 08.01.2019 by taking into account the said statement. It is only after the bail had been granted to the respondent No.2 that second motion statement was recorded on 27.03.2019 wherein the petitioner herein decided not to give divorce. Therefore, in such an eventuality, no fault can be raised to the order passed by the Additional Sessions Judge, Karnal on this ground.

The second argument as raised by the counsel for the petitioner that the Additional Sessions Judge, Karnal has erred in holding that there is no medical evidence on record to substantiate the charges under Section 313 IPC has merit, considering the fact that the State counsel herself has submitted that the charge under Section 313 IPC has been framed against respondent No.2 based on the medical evidence. It was not for the Additional Sessions Judge, Karnal to have gone into that question at that point of time and therefore, any observation made by the Additional Sessions Judge about charge under Section 313 IPC will be deemed to be an observation only for the purpose of deciding the bail application and not an opinion on merits of the case. As the respondent No.2 has not misused the bail granted to him as far back as 08.01.2019, this court does not find any ground to cancel the bail granted to him. Consequently, the instant petition stands dismissed.

October 05, 2021
Pankaj*

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No