

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

(Heard through VC)

CRM-M-40686 of 2021 (O&M)
Date of Decision: September 29, 2021

Sukhwant Kaur

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Amandeep Singh Manaise, Advocate
for the petitioner.

JAISHREE THAKUR, J. (Oral)

This is a petition that has been filed under Section 439(2) Cr.P.C. for cancellation of bail allowed to respondent No.2 by the Addl. Sessions Judge, Gurdaspur vide order dated 15.09.2021 in case FIR No.62 dated 05.08.2021, registered under Section 376, 420, 494, 506, 120-B of Indian Penal Code at Police Station Fatehgarh Churian, Police District Batala, District Gurdaspur.

Notice of motion to respondent No.1-State only.

At this stage, Mr. Rana Harjasdeep Singh, DAG Punjab, who is appearing through the medium of video conferencing, accepts notice on behalf of respondent No.1-State.

In brief, the facts of the case are that the aforesaid FIR has been

got registered by the petitioner alleging therein that she got married to respondent No.2 on 03.02.2012 and out of this wedlock one son namely Armandeep Singh was born. It has been alleged that husband and in-laws family of the petitioner used to harass her for demand of dowry and pushed them out of the matrimonial home. It is stated that respondent No.2 filed a divorce petition under Section 13 of Hindu Marriage Act before the District Courts, Amritsar and on getting notice of the same, she approached the Unit of her husband, stationed in Pathankot where the Commanding Officer intervened and the matter was amicably settled on 24.10.2017 and respondent No.2 promised to withdraw the divorce case. Thereafter, the petitioner started living with respondent No.2, however, respondent No.2 malafidely did not withdraw the divorce case and developed physical relations with her. It has been alleged that consequently the petitioner was proceeded ex parte and ex parte divorce decree dated 05.03.2018 was granted by the Addl. District Judge, Gurdaspur on the ground of cruelty. On coming to know about the passing of said ex parte decree of divorce, the petitioner approached the court for setting aside the ex parte decree of divorce. Thereafter, she filed an application 125 Cr.P.C. seeking maintenance, however, respondent No.2 later on, on the basis of ex parte divorce decree obtained fraudulently, performed a second marriage on 12.02.2019 with Prabhdeep Kaur. Aggrieved against this, the petitioner got lodged the instant FIR, in which anticipatory bail has been allowed to respondent No.2 on 15.09.2021, which order is under challenge in this petition.

Counsel for the petitioner would argue that while allowing

anticipatory bail to respondent No.2 the lower court did not consider the case on merits. It is also contended that the court below has wrongly observed that the petitioner moved the complaint much later after being turned out of the matrimonial home and that she had complete knowledge about the divorce case. It is argued that no ground is made out for grant of anticipatory bail to respondent No.2, as he has played fraud with the petitioner.

I have heard learned counsel for the parties and gone through the pleadings of the case.

The court below, while allowing anticipatory bail to respondent No.2 had taken into consideration all the contentions as raised by the petitioner in this petition. In its order, the court below has noticed that in the case filed by the petitioner for permanent injunction against respondent No.2 in the court of Civil Judge (Senior Division), Amritsar, the petitioner herein has admitted that she was in full knowledge that respondent No.2 had filed a divorce case against her in which she also received the summons and despite that she did not appear in the said case. It is also noted that she also stated that defendants No.2 to 4 (accused arrayed in the FIR case) have no fault and her dispute is only with respondent No.2. As per the orders passed by the court below, respondent No.2 did join the investigation and on the statement of SI Dalwinder Singh, the bail order dated 06.09.2021 was made absolute.

In this case, there is not a single allegation raised against respondent No.2 that he has misused the concession of bail allowed to him by the court below. The question whether respondent No.2 has played a

fraud with the petitioner is a matter of trial. So far as contention raised regarding obtaining ex parte decree of divorce by respondent No.2 fraudulently, the petitioner has already moved an application for setting aside the ex parte decree of divorce, which is pending consideration before the concerned court and the fate of the same will be decided by the said court and consequences will follow the event.

When a person to whom bail has been granted either tries to interfere with the course of justice or attempts to tamper with the evidence or witnesses or threatens witnesses or indulge in similar activity, which would hamper smooth investigation of trial, is a ground for cancellation of bail. In this regard, this court relies upon judgment rendered by the Supreme Court in *Manjit Prakash and others vs. Shobha Devi and another*, 2008(3) RCR (Criminal) 768. There is no such allegation neither pleaded nor argued and accordingly, this court finds no ground to cancel the bail, which had been allowed to respondent No.2 by the court below. Accordingly, the instant petition is hereby dismissed.

September 29, 2021

vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No