

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

CRM-M-29720-2022

Date of decision : 14.07.2022

Surjit Singh

.....Petitioner

versus

Union Territory of Chandigarh

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Vinay Begra, Advocate
for the petitioner.

Mr. Ankur Bali, Addl. PP, UT Chandigarh.

Mr. J.S. Bhinder, Advocate
for the complainant.

RAJESH BHARDWAJ, J. (Oral)

Petitioner has approached this Court praying for grant of anticipatory bail in case bearing FIR No.59 dated 19.06.2022, under Sections 495, 498-A of IPC, registered at Women Police Station Chandigarh.

As per the factual matrix of the case, the complainant filed the complaint before the Senior Superintendent of Police, UT Chandigarh wherein, she alleged that her marriage took place with Surjit Singh on 18.06.2021. Before the marriage, she was informed that Surjit Singh was unmarried. However, after the marriage, she was shocked to know that it was not only the first marriage of the accused Surjit Singh with her but the fourth marriage. She was physically and mentally harassed by the husband and his father. Accused Surjit Singh sexually abused her. Besides this, she gave details of harassment caused to her. She filed complaint with a prayer to take the legal action against the accused.

On the basis of the same, FIR was lodged. Apprehending

arrest, the petitioner approached the Court of learned Additional Sessions Judge, Chandigarh for grant of bail. After hearing both the parties, learned Additional Sessions Judge declined the same vide his order dated 6th July, 2022. Aggrieved by the same, the petitioner approached this Court praying for grant of anticipatory bail.

Learned counsel for the petitioner contends that the petitioner has been falsely implicated in this case. He submits that the allegations made in the FIR are false and frivolous. He has submitted that it was a simple wedding ceremony and hence, there was no question of any dowry. He submits that this was the third marriage of the petitioner and his first marriage was dissolved by mutual divorce in the year 2019. He submits that the complainant was very much aware of the earlier marriage of the petitioner. However, she has levelled false allegations of concealing these facts from her. He submits that the allegations were thoroughly investigated by the police and the same were found to be false. He has submitted that the petitioner has no criminal antecedents and hence, he deserves to be granted anticipatory bail.

Learned counsel for the complainant already present in the Court has vehemently opposed the submissions made by counsel for the petitioner. He has submitted that the petitioner has concealed the material facts from the complainant that this was his fourth marriage with her. He has submitted that the petitioner is not only being prosecuted for the offence under Section 498-A IPC, however, for the offence under Section 495 IPC as well for which the maximum punishment can be upto 10 years rigorous imprisonment. He has submitted that the petitioner is habitual of cheating innocent girls and thus, he does not deserve any leniency and

therefore, the prayer for the pre-arrest bail be declined.

Learned State counsel has also opposed the submissions made by counsel for the petitioner and submitted that the matter needs a thorough and proper investigation for which the custody of the petitioner is required.

I have heard counsel for the parties and perused the record. The allegations against the petitioner are that he has not only caused physical and mental harassment to the complainant, but also concealed everything about his earlier marriages. During the course of arguments, counsel for the petitioner agreed that this is his third marriage with the complainant. However, counsel for the complainant submitted that this is his fourth marriage. *Prima facie* there is no doubt that the petitioner was already married before tying the matrimonial knot with the complainant. For the offence under Section 498-A IPC, the sentence may extend to three years whereas, for the offence under Section 495 IPC, the sentence may extend to 10 years.

For the consideration of anticipatory bail, the statutory parameters are given under Section 438(1) Cr.P.C. which reads as under:-

“Direction for grant of bail to person apprehending arrest:-

(1) Where any person has reason to believe that he may be arrested on accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section that in the event of such arrest he shall be released on bail; and that Court may, after taking into consideration, inter alia, the following factors, namely:-

(i) the nature and gravity of the accusation;

- (ii) the antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;*
 - (iii) the possibility of the applicant to flee from justice; and*
 - (iv) where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested,*
- Either reject the application forthwith or issue an interim order for the grant of anticipatory bail.”*

As per the law settled by the Hon'ble Supreme Court, in Gurbaksh Singh Sibbia Vs. State of Punjab, AIR 1980 SC 1632, while granting anticipatory bail, the Court is to maintain a balance between the individual liberty and the interest of society. However, the interest of the society would also prevail upon the right of personal liberty. The relevant part of the judgment is as follows:-

31. In regard to anticipatory bail, if the proposed accusation appears to stem not from motives of furthering the ends of justice but from some ulterior motive, the object being to injure and humiliate the applicant by having him arrested, a direction for the release of the applicant on bail in the event of his arrest would generally be made. On the other hand, if it appears likely, considering the antecedents of the applicant, that taking advantage of the order of anticipatory bail he will flee from justice, such an order would not be made. But the converse of these propositions is not necessarily true. That is to say, it cannot be laid down as an inexorable rule that anticipatory bail cannot be granted unless the proposed accusation appears to be actuated by mala fides; and, equally, that anticipatory bail must be granted if there is no fear that the applicant will abscond. There are several other considerations, too numerous to enumerate, the combined effect of which must weigh with the court while granting or rejecting anticipatory bail.

The nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the applicant's presence not being secured at the trial, a reasonable apprehension that witnesses will be tampered with and "the larger interests of the public or the state" are some of the considerations which the court has to keep in mind while deciding an application for anticipatory bail. The relevance of these considerations was pointed out in State v. Captain Jagjit Singh (1962) 3 SCR 622, which, though, was a case under the old Section 498 which corresponds to the present Section 439 of the Code. It is of paramount consideration to remember that the freedom of the individual is as necessary for the survival of the society as it is for the egoistic purposes of the individual. A person seeking anticipatory bail is still a free man entitled to the presumption of innocence. He is willing to submit to restraints on his freedom, by the acceptance of conditions which the court may think fit to impose, in consideration of the assurance that if arrested, he shall be enlarged on bail.

The Hon'ble Supreme Court in State Vs. Anil Sharma, (1997)

7SCC 187, held as under:-

6. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well ensconced with a favorable order under Section 438 of the Code. In a case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the

person being subjected to third-degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible police officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders.

Examining the facts and circumstances of the present case, in the light of law settled by the Hon'ble Supreme Court, this Court is of the opinion that the petitioner fails to qualify for the test urging this Court to exercise its jurisdiction under Section 438 Cr.P.C.

Petition, being devoid of any merits, is hereby dismissed. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

14.07.2022
m. sharma

(RAJESH BHARDWAJ)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No