

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

CRM-M-35945-2021

Date of decision : 17.08.2022

Hukam Chand and another

.....Petitioners

versus

State of UT Chandigarh

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. S.C. Arora, Advocate
for the petitioners.

Mr. Abhinav Gupta, Addl. PP, UT Chandigarh.

Mr. Sidharth Gupta, Advocate
for the complainant.

RAJESH BHARDWAJ, J.

Petitioner has approached this Court by way of filing petition under Section 438 Cr.P.C. praying for grant of anticipatory bail in case FIR No.34 dated 03.06.2021, under Sections 406 and 498-A of IPC, registered at Police Station Women Police Station, Chandigarh.

As per the facts of the case, the present FIR was lodged by respondent No.2-complainant wherein it was alleged that the marriage of the son of the petitioners took place with the complainant-respondent No.2 on 09.02.2019. Thereafter, both i.e. son of the petitioners namely, Ashwani Kumar Angrish and the complainant shifted to USA. However, the matrimonial discord took place between husband and wife and resultantly, the FIR in question was lodged. The son of the petitioners is in USA whereas the complainant and the petitioners are in India. The petitioners approached the Court of learned Additional Sessions Judge, Chandigarh praying for grant of anticipatory bail. However, after hearing counsel for the parties, the same was declined by learned Additional Sessions Judge,

Chandigarh vide his order dated 20th August, 2021. Aggrieved by the same, the petitioners approached this Court praying for grant of anticipatory bail.

At the time of the initial hearing, learned counsel for the petitioners submitted before this Court that the petitioners are the parents-in-law of the complainant and they are seriously interested in settling the dispute amicably. The Court found both the sides of the opinion that the matter be referred to the Mediation Centre for exploring the possibility of amicable settlement and hence, the parties were referred to the Mediation and Conciliation Centre of this Court and the petitioners were granted interim bail vide order dated 2nd September, 2021 and the case was adjourned for 07.12.2021. However, when the case came up for hearing on 07.12.2021, it was submitted by learned State counsel that despite the order passed by this Court, the petitioners did not join investigation. However, in the interest of justice, this Court granted one more opportunity to the petitioners for joining investigation and the case was adjourned for 12.01.2022. When the case came up for hearing on 12.01.2022, it was submitted by counsel for the petitioners that the mediation proceedings remained unsuccessful as the demand from the complainant was exorbitant. However, he submitted that the petitioners are ready to offer an amount of Rs.25.00 lacs to the complainant.

After interacting with counsel for both the parties, this Court again referred the matter to the Mediation Centre on their joint request and the interim bail allowed to be continued and the case was adjourned for 20.04.2022. On 20.04.2022, again a request was made for allowing the parties to continue with the mediation and the case was adjourned for

21.07.2022.

Learned counsel for the petitioner reiterated his offer of Rs.25.00 lacs even on 21.07.2022 and this matter was adjourned for 02.08.2022 and the interim order was ordered to continue. However, when the case came up for hearing on 02.08.2022, the petitioners changed their counsel and Sh. S.C. Arora, Advocate filed his power of attorney as new counsel for the petitioners and the case was adjourned for today i.e. 17.08.2022.

Learned counsel for the petitioners Sh. S.C. Arora, has vehemently submitted that the petitioners have never authorized their earlier counsel to make an offer of Rs.25.00 lacs which he had submitted before this Court on the earlier occasions. He submits that the petitioners are the parents-in-law of the complainant. However, the dispute is between the husband and wife. He submits that their son is already in USA and they cannot be held responsible for the deeds of their son and the allegations against them are false and frivolous.

On the other hand, learned counsel for the complainant has vehemently opposed the submissions made by counsel for the petitioner. He has submitted that there are specific allegations against the petitioners made by the complainant. He submits that the life of the complainant has been ruined by the petitioners and their son. He submits that immediately after the marriage, the son of the petitioners left for USA and the complainant was left at the mercy of his parents. He submits that though after the marriage initially, the complainant was taken by the son of the petitioners to USA, however, thereafter, she was left in India at the mercy of his parents. He has submitted that both the petitioners caused harassment on account of dowry to the complainant while she remained

with them. He submits that their son is in USA and the petitioners cannot also escape from India. He has further submitted that just in order to get the interim bail, the petitioners argued before this Court that they are keen to settle the dispute amicably. However, after getting the interim bail, they virtually backed out of the same and never showed any inclination in settling the dispute amicably. He further argued that it was submitted before this Court that the petitioners have offered Rs.25.00 lacs for amicable settlement but that was also withdrawn by changing the counsel. He submits that the anticipatory bail is an extraordinary relief and the conduct of the petitioners do not entitle them to get the same.

I have heard counsel for the petitioners and perused the record.

Evidently, the petitioners are parents-in-law of the complainant. The son of the petitioners who is the husband of the complainant has left India. As per the allegations in the FIR, she was persistently harassed and taunted on account of dowry demand. Keeping in view the peculiar facts and circumstances of the case, this Court granted interim bail to the petitioners by referring the matter to the mediation with the hope that the petitioners would honour the contentions raised before this Court. The husband is out of India and the petitioners were the only hope for the complainant for resolving the dispute. The parties were referred to the Mediation Centre and the protection granted to the petitioners was also extended. It was projected before this Court by the petitioners that they are keen towards settling the dispute amicably. However, the petitioners instead of honouring the submissions made changed the counsel and took a u-turn by coming out with the new argument that earlier counsel had made offer of Rs.25.00 lacs without their consent.

From the overall facts and circumstances of the case, this Court is *prima facie* convinced that primarily the petitioners were interested in the interim protection and not in finding out any solution to the plight of the complainant. In the situation when the husband is staying abroad and the petitioners who are parents-in-law are staying in India cannot wriggle out of the responsibility by circumventing the orders of this Court.

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 always 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.

Keeping in view the demeanor of the petitioners and the relevant facts and circumstances of this case, this Court is of the opinion that the petitioners do not deserve the concession of anticipatory bail. Resultantly, the petition being devoid of any merits, is hereby dismissed.

17.08.2022
m. sharma

(RAJESH BHARDWAJ)
JUDGE

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