

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

CRM-M-36308-2022 (O&M)

Date of Decision: *November 30, 2022*

Jashika

.... *Petitioner*

Versus

State of Haryana and another

.... *Respondents*

CORAM : HON'BLE MR. JUSTICE VIVEK PURI

Present: Ms. Varuna Singh, Advocate,
for the petitioner.

Vivek Puri, J.

Present petition under Section 439(2) read with Section 482 Cr.P.C. has been instituted by the petitioner seeking cancellation of anticipatory bail granted to respondent no.2 in terms of order dated 27.04.2022 passed by the Court of learned Additional Sessions Judge, Fast Track Court, Sonapat in case bearing FIR No. 120, Dated 22.02.2022, under Sections 323, 498-A, 406, 377, 506 IPC, registered at Police Station City, Sonipat.

Briefly, an F.I.R. bearing No. 81, dated 07.10.2021 has been registered on the basis of the complaint submitted by the petitioner alleging that her

marriage was solemnized with respondent no.2 on 15.03.2020 as per Hindu rites and ceremonies. Sufficient dowry articles were given at the time of marriage. The in-laws of the petitioner were not satisfied with the dowry given at the time of marriage and they started harassing her on account of demand of dowry. The accused had been raising demand of smart TV, bigger car, flat and cash amounting to Rs. 10 lakhs. It has been further alleged that her husband used to commit unnatural sex with her and on resistance, she was given beatings. On 28.05.2020, her brother-in-law Pardeep committed rape upon her. Thereafter, she got registered a case bearing FIR No. 25 dated 18.02.2021, under Sections 354-A, 376, 498-A, 506, 34 IPC at Police Station Women Panipat. It has been further alleged that husband of the petitioner used to give her beatings and demanded Rs. 10 lakhs for opening a hospital.

In terms of the order dated 27.04.2022, the application for anticipatory bail under Section 438 Cr.P.C. instituted by the respondent no.2 was allowed by the learned Additional Sessions Judge, Sonapat. The aforesaid order has been impugned in the instant petition.

It has been contended by the learned counsel for the petitioner that the recovery of the dowry articles is yet to be effected and the bail has been granted on flimsy grounds. Even the brother of the respondent no.2 had committed rape upon the petitioner and a case bearing FIR No. 25 dated 18.02.2021, under Sections 354-A, 376, 498-A, 506, 34 IPC at Police Station Women Panipat, has been registered against the brother and mother of the respondent no.2. There are sufficient and reasonable grounds for custodial interrogation of the respondent no.2 and no extra ordinary circumstances are made out to extend the concession of pre-arrest bail to the respondent no.2.

In ***Criminal Appeal No. 1972 of 2022*** titled as “***Bhuri Bai vs. The State of Madhya Pradesh***”, decided on ***11.11.2022***, it has been laid down as following:-

“19. It remains trite that normally, very cogent and overwhelming circumstances or grounds are required to cancel the bail already granted. Ordinarily, unless a strong case based on any supervening event is made out, an order granting bail is not to be lightly interfered with under [Section 439\(2\) CrPC](#).”

20. It had not been the case of the prosecution that the appellant had misused the liberty or had

comported herself in any manner in violation of the conditions imposed on her. We are impelled to observe that power of cancellation of bail should be exercised with extreme care and circumspection; and such cancellation cannot be ordered merely for any perceived indiscipline on the part of the accused before granting bail. In other words, the powers of cancellation of bail cannot be approached as if of disciplinary proceedings against the accused and in fact, in a case where bail has already been granted, its upsetting under [Section 439\(2\)](#) CrPC is envisaged only in such cases where the liberty of the accused is going to be counteracting the requirements of a proper trial of the criminal case. In the matter of the present nature, in our view, over-expansion of the issue was not required only for one reason that a particular factor was not stated by the Trial Court in its order granting bail.”

It may be mentioned here that the power of cancellation of bail has to be exercised with care and circumspection. The cancellation of bail has to be resorted only in case of patent perversity. The bail can be cancelled in the event there is an interference in the due course of justice, hampering investigation, abusing the freedom granted by the Court, intimidation of the witnesses etc. Such reasons for cancellation of bail can only be termed to be illustrative and not exhaustive. It is

left to the sound judicial discretion of the Court and the bail is required to be cancelled in the event compelling circumstances are made out for such an indulgence. The rejection of bail in a non-bailable case and the cancellation of bail so granted have to be dealt with and considered on the basis of separate yard sticks. The bail already granted can be cancelled in the event there are cogent and overwhelming circumstances to do so. The bail can be cancelled in the event the same has been granted illegally or improperly by erroneous and arbitrary exercise of the discretion. Very cogent and overwhelming grounds/circumstances are required to cancel the bail already granted.

On advertng to the merits of the present case, it is significant to note that the reason assigned by the learned trial Court for granting pre-arrest bail to the respondent no.2 is to the effect that respondent no.2 has already joined the investigation and nothing was to be recovered from his possession. Furthermore, in the event, the FIR with regard to the commission of offence under Section 376 IPC has been registered at the instance of the petitioner against the brother and mother of the respondent no.2, they will face consequences thereof in the event of proof of allegations leveled

therein. It has not been disputed that the respondent no.2 has not been arraigned as an accused in that case.

The offence under Section 406 IPC consists of criminal breach of trust. It will remain a moot and debatable point during the course of trial as to whether any articles of istridhan were entrusted to respondent no.2, if entrusted, whether any demand for return thereof was raised and if so, as to whether respondent no.2 had refused to return the said articles. In the decisions ***Jagdish Thakkar vs. State of Delhi, 1992(3) CCR 2764, Uday Singh vs. State of Haryana, 2001(1) R.C.R. (Criminal) 354, Anil Rajput and others vs. State of Haryana, 2010 (6) R.C.R. (Criminal) 1126, Beant Singh and another vs. State of Punjab, 2011(20 RCR (Criminal) 381 and Vishal Gulati vs. State of Punjab (CRM-M-17915-2012, decided on 05.07.2012)***, it has been observed that the proceedings under Sections 406, 498-A IPC are not meant for recovery of dowry articles.

In these set of circumstances, the refusal of the bail only on the score that no recovery has been effected, particularly when the respondent no.2 has joined the investigation cannot be termed to be justified.

Moreover, there is no allegation to the effect that the respondent no.2 has misused or abused the

concession of bail. Even there is no allegation that there is any apprehension to the effect that the respondent no.2 will in any manner flee from justice, hamper the investigation or intimidate the witnesses. As such, the reasons which weighed in the mind of the Court while granting pre-arrest bail can be termed to be sufficient to exercise the powers granted under Section 438 Cr.P.C.

The impugned order even when tested on merit indicates that the same does not suffer from any illegality, arbitrariness or perversity which may provide any justified ground for indulgence by this Court for cancellation thereof.

Present petition is dismissed accordingly.

November 30, 2022

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[Vivek Puri]
Judge

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