

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

Date of Decision: September 12, 2022

1) CRM-M-39942-2022

Esha Batra

... Petitioner

Versus

State of Punjab and another

...Respondents

2) CRM-M-40265-2022

Esha Batra

... Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present: Mr. Harshit Jain, Advocate,
for the petitioner(s).

Mr. A.P.S.Tung, DAG, Punjab.

Vivek Puri, J.

Both the aforesaid petitions i.e. CRM-M-39942-2022 and CRM-M-40265-2022 under Section 439(2) of the Code of Criminal Procedure (for short `Cr.P.C.`) have been instituted by the petitioner seeking cancellation of anticipatory bail granted to the respondent no.2 i.e. Dheeraj Batra (in CRM-M-39942-2022) and Raman Batra (in CRM-M-40265-2022) in the case bearing FIR No. 101, dated 04.06.2022, under Sections 406, 498-A of the Indian Penal Code (for short `IPC`), registered at Police Station Women

Cell, Ludhiana by the Court of learned Additional Sessions Judge, Ludhiana vide order dated 30.07.2022.

Certified copy of order dated 30.07.2022 passed in bail application titled "State vs. Raman Batra" has filed in Court today and the same is taken on record.

Briefly, the FIR has been registered on the basis of an application submitted against the respondent no.2 (in both the petitions) along with Rohit Batra (Devar), Muskan Batra (Devrani) and Ashok Batra (father-in-law) for harassing, bringing less dowry, abusing and beating her on account of demand of dowry. The marriage of the petitioner was solemnized with Dheeraj Batra-respondent on 30.08.2020 and sufficient dowry articles were given at the time of marriage. The respondent no.2 (in both the petitions) along with other accused had been mal-treating her and imputing allegations against her character. They had also been harassing her on account of bringing less dowry. The petitioner was also given beatings and humiliated by the accused.

I have heard learned counsel for the parties and perused the record.

Learned counsel for the petitioner has mainly contended that the anticipatory bail has been granted without considering the nature and gravity of the allegations

and even the antecedents of the respondent no.2-accused. The recovery of dowry articles is an important component of the investigation. The recovery is yet to be effected and the bail has been granted without considering the gravity and nature of the offence.

In pursuance of the advance notice, learned State counsel for respondent no.1 is present. On a query, it has been submitted that there is no allegation to indicate that the respondent no.2 (in both the petitions) were involved in any other case at the earlier instance.

At the very outset, it may be mentioned here that Dheeraj Batra-respondent no.2 in CRM-M-39942-2022 is the husband and Raman Batra, respondent no.2 in CRM-M-40265-2022 is the mother-in-law of the petitioner. The FIR has been registered on the basis of the application submitted by the petitioner. In the application, the allegations are also leveled against Rohit Batra (Devar), Muskan Batra (Devrani) and Ashok Batra (father-in-law). However, after an inquiry, the FIR has been registered only against the respondent no.2 (in both the petitions). The impugned order also indicates that some of the articles of istridhan have been recovered, but the petitioner had only identified one gold ring and refrigerator to be belonging to her.

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 reason 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 is 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.

On advertng to the merits of the case, the cancellation of bail has been primarily sought on the score that the recovery of articles of istridhan has not been effected. In the instant case, it has not been disputed that the respondent no.2 (in both the petitions) have joined the investigation and some articles of istridhan have been recovered. 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 the articles of istridhan were entrusted to respondent no.2 (in both the petitions), if entrusted, whether any demand for return was raised and if so, as to whether the respondent no. 2 (in both the petitions) have refused to return and have misappropriated the said articles. The proceedings under Sections 406 and 498-A IPC are not meant for recovery of dowry articles. In this regard, reference can be made to the following decisions:-

- “1. Jagdish Thakkar vs. State of Delhi, 1992(3) CCR 2764;**
- 2. Uday Singh vs. State of Haryana, 2001(1) RCR (Criminal) 354;**
- 3. Anil Rajput and others vs. State of Haryana, 2010 (6) RCR (Criminal) 1126;**
- 4. Beant Singh and another vs. State of Punjab, 2011 (2) RCR (Criminal) 381;**
- 5. Vishal Gulati vs. State of Punjab, (CRM-M-17915-2012, decided on 5.7.2012).”**

In these set of circumstances, the refusal of bail or cancellation of bail only on the score that no recovery of articles has been effected, when the respondent no.2 (in both the petitions) have joined the investigation cannot be termed to be justified, particularly because some of the dowry articles have been recovered and taken into possession during the course of investigation.

Moreover, there is no allegation to the effect that the respondent no.2 (in both the petitions) have misused or abused of 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. The reasons which weighed in the mind of the Court, while granting pre-arrest bail can be termed to be sufficient to exercise powers granted under section 438 Cr.P.C.

The impugned orders even when tested on merits indicate that the same do not suffer from any illegality, arbitrariness or perversity which may provide justified ground for indulgence of this Court for cancellation thereof. Even the learned State counsel has confirmed that there are no criminal antecedents against the respondent no.2 (in both the petitions) which may render them disentitle for the concession of the pre-arrest bail.

Both the aforesaid petitions are dismissed accordingly.

September 12, 2022
vkd

(Vivek Puri)
Judge

Whether reasonable/speaking :	Yes/No
Whether reportable :	Yes/No