

101 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-49966-2021

Date of Decision: 04.04.2022

GAGANDEEP KAUR

... PETITIONER

V/S

STATE OF PUNJAB & OTHERS

... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present: Mr. Balbir Singh Jaswal, Advocate for the petitioner.

Mr. Hittan Nehra, Addl. A.G. Punjab.

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VIVEK PURI, J. (ORAL)

Present petition under Section 439 (2) Cr.P.C. has been instituted by the petitioner seeking cancellation of anticipatory bail granted to respondent Nos. 2 and 3 vide order dated 01.08.2021 in the case bearing FIR No. 60 dated 01.08.2021 under Section 498-A IPC, registered at Police Station Women, Amritsar and offence under Section 406 IPC added later on vide DDR No. 18 dated 06.10.2021.

Briefly, the FIR No. 60 dated 01.08.2021 under Section 498-A, IPC was registered on the basis of a complaint submitted against the petitioner and others alleging that her marriage was solemnized with respondent No.2 on 16.01.2020. Sufficient dowry articles were given at the time of marriage. The petitioner was being subjected to maltreatment and cruelty on account of demand of dowry. Initially, the FIR was registered under Section 498-A IPC. Subsequently, vide entry in General

Diary bearing No. 18 dated 06.10.2021, the offence under Section 406 IPC

was also added. In terms of the order dated 28.10.2021, the petitioners were granted interim bail with a direction to join the investigation. Subsequently, in terms of the order dated 03.11.2021, they were again directed to join the investigation after addition of the offence under Section 406 IPC. Thereafter, in terms of the order dated 10.01.2021, it was observed that respondent Nos. 2 and 3 have joined the investigation and accordingly, the anticipatory bail was allowed. The interim bail granted to them was made absolute.

Learned learned counsel for the petitioner contends that respondent No.2 is the husband and respondent No.3 is the father-in-law of the petitioner. The bail has been granted on insufficient and flimsy grounds as the recovery of dowry articles is yet to be effected.

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.

anticipatory bail in the Court below, the petitioner had also raised an objection with regard non-recovery of the articles of *istridhan*. However, the learned Court below had relied upon 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 : 2001 (2) All India Criminal LR (P&H) 568**
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.**

Learned counsel for the petitioner has not been able to draw any distinction from the aforesaid decisions. 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 Nos. 2 and 3, if entrusted, whether any demand for return thereof was raised and if so, as to whether respondent Nos. 2 and 3 had refused to return the said articles. Even in the aforesaid decisions, it has been observed that the proceedings under Section 406 and 498-A IPC are not meant for recovery of the dowry articles. Furthermore, it remains disputed as to whether any such articles were entrusted or not and in such circumstances, the refusal of bail only on the score that no recovery has been effected, particularly when respondent Nos. 2 and 3 have joined the investigation cannot be termed to be justified.

Moreover, there is no allegation to the effect that respondent

Nos. 2 and 3 have misused or abused the concession of bail. Even there is

no allegation that there is any apprehension to the effect that respondent Nos. 2 and 3 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 order even when tested on merits indicates that the same does not suffer from any illegality, arbitrariness or perversity which may provide justified ground for indulgence by this Court for cancellation thereof.

Present petition is accordingly dismissed.

04.04.2022

Janki

**(VIVEK PURI)
JUDGE**

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