

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

CRM-M-52490-2021

Date of Decision: August 25, 2022

Jasmeet Kaur

... Petitioner

Versus

Union Territory, Chandigarh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present: Mr. R.S. Rawat, Advocate,
for the petitioner.

Mr. Abhinav Gupta, Addl.P.P. U.T., Chandigarh

Vivek Puri, J.

Present petition under Section 439(2) of the Code of Criminal Procedure (for short 'Cr.P.C.') has been instituted by the petitioner seeking cancellation of anticipatory bail granted in the case bearing FIR No. 43, dated 16.07.2021, under Sections 406, 498-A of the Indian Penal Code (for short 'IPC'), registered at Police Station Women Sector 17, Chandigarh by the Court of learned Additional Sessions Judge, Chandigarh vide order dated 11.11.2021 (Annexures P-1 & P-2).

Briefly, the FIR has been registered by the complainant on the allegations that her marriage was solemnized with the respondent no.2 on 10.12.2018.

Respondent no.2 never gave the complainant status of the

wife and she was not satisfied with her married life. The respondent no.2 was physically unfit to make physical relations. The complainant had shared with regard to the problem of her husband, with her mother-in-law, the family members of her in-laws started torturing her physically and mentally. She was being harassed as a car was not given in the marriage. It has also been alleged that her father-in-law outraged her modesty. Her gold jewellery was given to her mother-in-law on her asking on the pretext that the same should not be kept in the house on account of increasing incidents of theft.

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

Learned counsel for the petitioner contends that the respondent nos. 2, 3 and 4 are the husband, father-in-law and mother-in-law, respectively, of the complainant. The bail has been granted on insufficient and flimsy grounds as the recovery of dowry article is yet to be effected. The recovery of dowry articles is an important component of the investigation and has placed reliance upon ***Bhawna Chahar vs. Kusum Lata Solanki and others, 2014 (37) R.C.R. (Criminal) 866 (P&H)***. Furthermore, the concession of bail has been extended without considering the gravity and nature of the offence and has relied upon ***Prakash***

Kadam etc. vs. Ramprasad Vishwanath Gupta and another, 2011(3) R.C.R. (Criminal) 1.

In pursuance of the advance notice, learned counsel for respondent no.1 is present and submits that though there are some contradictions in the FIR, but the matter is being probed and investigated in a proper perspective. As per the status report submitted in the Court below, the respondent nos. 2 to 4 joined the investigation and had also produced some of the dowry articles. It has also been stated that the respondent nos. 2 to 4 have not in any manner abused or misused the concession of bail. They had cooperated during the course of investigation.

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 advertent to the merits of the present case, the cancellation of bail has been primarily sought on the score that the recovery of articles of istridhan has not been effected. The perusal of the impugned order indicates that the status report was also sought by the investigating agency which indicated that the respondent nos.2 to 4 had joined the investigation, but had not got recovered the gold articles received at the time of solemnization of the marriage. Furthermore, the learned Court below has also placed reliance upon ***Bhupinder Singh etc. vs. State of Punjab, 2014 (2) R.C.R. (Criminal) 109*** and ***Rajesh Sharma and others vs. State of UP and another, Criminal Appeal No. 1265, decided on 27.07.2017*** to conclude that the recovery of dowry articles cannot be construed as a ground to decline the bail.

It may be mentioned here that the facts of the decision rendered in ***Bhawna Chahar (supra)*** relied upon by the learned counsel or the petitioner are distinguishable from the facts of the present case. In the said decision, the bail was cancelled on the score that the observations recorded in the order passed by the Court of learned

Additional Sessions Judge were contrary to the record. It was mentioned in the order granting bail that the recovery had already been effected. However, the reply filed by the police authorities indicated that arrest was required for effecting recoveries. Consequently, it was observed that such observations may be prejudicial to the prosecution agency and also at the time when the husband of the petitioner in that case will seek concession of bail under Sections 438 or 439 Cr.P.C. whose arrest was yet to be effected. Even, it has also been observed that purpose of criminal proceedings is not to help the recovery of any articles.

However, in the instant case, it has been categorically observed in the impugned orders that the respondents no.2 to 4 have joined the investigation and they produced some of the dowry articles, which have been taken into police possession in the presence of the complainant vide seizure memo dated 07.10.2021. The offence under Section 406 IPC consists of criminal breach of trust. It will remain in moot and debatable point during the course of trial as to whether any articles of istridhan were entrusted to respondent nos.2 to 4, if entrusted, whether any demand for return was raised and if so, as to whether the respondents no. 2 to 4 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 nos.2 to 4 have joined the investigation cannot be termed to be justified, particularly because some of the dowry articles have been recovered and taken into possession vide seizure memo dated 07.10.2021.

The ratio of the decision rendered in **Prakash Kadam (supra)** is also distinguishable from the facts of the present case as the said case pertains to fake encounter against police officials with regard to commission of offence under Section 302 IPC.

Moreover, there is no allegation to the effect that the respondents no.2 to 4 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 nos. 2 to 4 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 does not suffer from any illegality, arbitrariness or perversity which may provide justified ground for indulgence by this Court for cancellation thereof.

Petition is dismissed accordingly.

August 25, 2022

vkdl

(Vivek Puri)
Judge

Whether reasonable/speaking :	Yes
Whether reportable :	Yes