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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****CRM-M- 37602 of 2023****Date of decision : August 03, 2023****Daya Devi****..... Petitioner****Versus****State of Haryana****..... Respondents****CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN*********

Present :-Mr. Ramnish Puri, Advocate
for the petitioner.

Mr. Gaurav Bansal, DAG, Haryana.

*********PANKAJ JAIN, J. (ORAL)**

1. Present petition has been filed under Section 438 Cr.P.C. seeking pre-arrest bail in FIR No. 26 dated 06.02.2023 for offences punishable under Sections 406, 420,120-B IPC, 1860 (Section 494 was added later on) registered at Police Station Farakpur District Yamuna Nagar.

2. In the FIR it has been alleged as under:-

“It is submitted as under: and cash 1. That the applicant is permanent resident of village Mandebri, Tehsil Jagadhri, P.S Farakpur, Distt Yamuna Nagar and law abiding citizen of санкри 18-10-2024 13. 2. That the marriage between the applicant and culprit no1 was solemnized on Dated 11.10.2017 at Gurudwara Naraingarh according to Sikh Rites and Ceremonies in the presence of respectable persons of both the parties. 3. That the parents i.e (Culprit no. 2 3) of culprit no. 1 before the marriage told the applicant that the culprit No.1 was earlier married with Sh. Sher Singh son of Sh. Sharwan Singh R/o Village Kharindwa Tehsil Naraingarh, Distt Ambala and the culprit noI has obtained the divorce from Shri Sher Singh and thus believing upon the representation of parents i.e (Culprit no. 2 3) of the culprit no. 1 the applicant agreed to marry the culprit no. 1. It is further submitted that marriage of the applicant with culprit no. 1 was simple as there was

no Baraat or gathering from the side of applicant, except the family members and the applicant paid the expenses of dinner at the time of marriage at Naraingarh. It is worthwhile to mention here that that no dowry articles were demanded by the applicant at the time of marriage. 4. That after the marriage the culprit noI stayed about 25 days with the applicant in his village Mandebri and during her stay at the house of applicant, the behavior of all the culprit no. 1 was abnormal towards the applicant and their family member. 5. That after some days the culprit no.1 started demanding ornaments and costly clothes which the applicant provided to her. The culprit no. 1 also demanded mobile which the applicant gave to her and after getting the mobile phone the culprit noI always busy on mobile phone, and when the applicant politely asked to prepare the meal for the applicant and his parents then the culprit no. I always quarrel with the applicant 6That on dated 05.11.2017 the culprit no. 1 told the applicant that she want to go to her parental house for some days, and then the applicant took her to parental house. After the lapse of 15 days when the applicant went to her village to bring her back, the culprit no. 1 started making false and defamatory allegations against the applicant and also made an false allegation regarding the sexual relation between the applicant and the wife of his younger brother. 7. That when the applicant protested against the behavior of culprit no. 1 and false allegation of adultery, and then the culprit no. 1 refused to returned to her matrimonial home. The applicant requested the culprit no. 1 to return to her matrimonial home then the culprit no. 1 put a condition before the application that she will return to village Mandebri, Tehsil Distt. Yamunangar only when that the applicant arrange the separate accommodation for her. The applicant in order to save his married life agreed with the condition of culprit no. 1. That thereafter the father of the applicant had given the first floor of the house to the applicant and his wife i.e culprit no. 1 for residence. The applicant and the culprit no. I started living in the first floor of the house in the village Mandebri Tehsil Distt Yamuna Nagar. 8. That the applicant is driver by profession and the father of the applicant had purchased car for the applicant on easy installment so that the applicant may earn his livelihood. The applicant started using his car

as taxi and used to go to different cities with his customers. The applicant is known as a good taxi driver in the area and the people used to engage him. The culprit no. 1 become annoyed with the applicant for his coming late and going early in his profession and refused to prepare breakfast and dinner for the applicant and not allow the applicant to sleep and take rest in his house. The applicant has to bring the meal from hotel for himself and for the culprit no. 1. The applicant also told this fact to the parents i.e culprit no. 2 3 of the culprit no. 1 but they instead of listening to the applicant started threatening and abusing the applicant. The culprit no. 1 not allowed the applicant to talk with his parents and the children of his brother, who are also residing in the same house, which creates mental cruelty to the applicant. 9. That on Dt. 08-3-2018, the applicant took the culprit no. I to her parental i.e culprit no. 2 3 house and told about the behaviour of the culprit no. 1 to her parents but the parents of the culprit no. I started threatening the applicant to involve him a false criminal case with the help of their relatives who are in the police and posted at Naraingarh. The applicant somehow came back to his village and took his taxi to Rajasthan with this customers and when the applicant return at his house then he came to know that the culprit noI along with her brother and sister i.e culprit no. 4 to 6 came in the house of the applicant and break upon the lock of the house of the applicant forcibly. The father of the applicant went to the police for lodging a complaint against them, in the mean time the culprit no. 1 along with culprit no. 4 to 6 slipped away from the house of the applicant and while going they had taken away a sum of Rs30,000/- and golden ornaments of Rs. 1,25,000/- from the house. Thereafter, the applicant tried to contact the parents of the culprit no. 1 but could not do soThe applicant made enquiries from the area about the family of the culprit no. I and came to know on 12-3-2018 that the culprit no. I was earlier married with Sh. Gian Singh of village Mirjapur. The met Sh. Gian Singh who told that the culprit noI was married with him and she has deserted him after taking a sum of Rs. 2,50,000/on 5-10-2010 and gave writing to him and left him and also told that there was no divorce from the court and the culprit no. 1 performed her second marriage with Rajesh son of Sh.

Gurmail Singh, resident of village Thaska on 26-2-2012 and the said Rajesh told that the culprit no. 1 took Rs. 1,50,000/- from him in consideration of her relieving him and gave writing to him and thirdly the culprit no. 1 performed her marriage with Sher Singh of village Kharindwa on 14-12-13 without taking divorce from him. The said Sher Singh was also not satisfied with the behaviour of the culprit no. 1 and she took Rs. 50,000/- and golden jewellery from Sh. Sher Singh and gave writing to him and left him and thereafter, performed her marriage with the applicant without disclosing her previous marriage on Dt. 11-10-2017, which is an invalid marriage. 10. That thereafter the applicant had filed a petition under section 11 of HMA before the Principal Judge Family Court Yamunanagar against the culprit no. 1 and after considering the facts of the Case the Honorable Court of Sh. Harleen A. Sharma Principal Judge Family court has passed an order dated 07.02.2022 and declare the marriage of application null and void. 11. That thereafter the applicant contacted the above said culprits and requested to return the gold ornaments which was taken away by the culprit no. 1 from the house of the applicant, but the above said culprit .become adamant and flatly refused to return the same to the applicant and in this way the above said culprit inclusion with each and in order to cheat the applicant retain the gold ornament of the applicant. Hence this application. It is therefore respectfully prayed that to kindly take the appropriate legal action against the above said culprits and to investigate the matter and lodge the FIR against the above said culprit SD/- Tejinder Singh Tejinder Singh son of Sh. Alam Singh resident of village Mandebri, Tehsil Jagadhri, P.S Farakpur, Distt Yamunanagar. PH-8814053600.

Place:-Yamuna Nagar. Applicant. Today at Police Station - A complaint no. 10575 dated 10.10.2022 was received from the Office of Superintendent of Police, Yamunanagar, after the investigation of complaint offence u/s 420, 406, 120-B IPC was found and on which FIR No. 26 dated 06.02.2023 u/s IPC, P.S. Farakpur has been registered and copy of FIR has been prepared by computer and is being sent to the higher officials through post. Copy of original complaint and police file has been taken by me

L/SI Usha Rani No. 169/AMB myself. Both the parties shall be joined in the proceeding for further investigation. The entry in the record has been made as per rules.”

3. Learned counsel for the petitioner submits that there is a huge delay in lodging the FIR. The FIR was lodged only on 06.02.2023 whereas the allegations with respect to the complainant having been duped into a marriage was of March,2018. He further submits that the petitioner is mother to a special child and in order to take care of her child she deserves to be granted the concession of pre-arrest bail. He further contends that the present FIR is an abuse of process of law being counter blast to the proceedings under Section 125 Cr.P.C. Apart therefrom, the petitioner prays for parity on the basis of order dated 24.07.2023 passed by this Court in **CRM-M-35163-2023** whereby the co-accused were granted the concession of interim bail.

4. I have heard learned counsel for the petitioner and have gone through the record of the case.

5. Keeping in view the allegations levelled against the petitioner of having duped the complainant and other persons in marrying multiple times while subsistence of the previous marriages, this Court does not find it to be a fit case to grant the concession of pre-arrest bail.

6. Definitely the moment it came to the knowledge of the complainant and he was sure about the fact of there being previous marriages of the petitioner, present FIR was lodged. So far as proceedings under Section 125 Cr.P.C are concerned, this Court does not wish to comment thereon as to whether the same would be maintainable in view of the multiple marriages. So far as the parity is concerned, this Court while granting the concession of pre-arrest bail to the co-accused was conscious of the fact that the applicant herein

“Learned counsel for the petitioners inter alia contends that there is no allegation qua any entrustment to any of the petitioners and they have been implicated only on the basis of them being parents of Daya Devi who happens to be the main culprit.”

7. As per settled law petitioner is required to make out a case for invoking jurisdiction under Section 438 Cr.P.C. In **Gurbaksh Singh Sibbia's case (supra)**, Apex Court has held that :-

“..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....

8. Likewise while reiterating the law laid down in **Gurbaksh Singh Sibbia's case (supra)** Apex Court in **Sushila Aggarwal and others Vs. State (NCT of Delhi) and another, 2020 (5) SCC 1** held that:-

“(4) Courts ought to be generally guided by considerations such as the nature and gravity of the offences, the role attributed to the applicant, and the facts of the case, while considering whether to grant anticipatory bail, or refuse it. “

Further Supreme Court in the case of **Sumitha Pradeep Vs. Arun**

Kumar C.K. and another 2022 (4) RCR Criminal) 977 held as under:

“There appears to be a serious misconception of law that if no case for custodial interrogation is made out by the prosecution,

then that alone would be a good ground to grant anticipatory bail. Custodial interrogation can be one of the relevant aspects to be considered along with other grounds while deciding an application seeking anticipatory bail. There may be many cases in which the custodial interrogation of the accused may not be required, but that does not mean that the prima facie case against the accused should be ignored or overlooked and he should be granted anticipatory bail. The first and foremost thing that the court hearing an anticipatory bail application should consider is the prima facie case put up against the accused. Thereafter, the nature of the offence should be looked into along with the severity of the punishment. Custodial interrogation can be one of the grounds to decline custodial interrogation. However, even if custodial interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail.”

9. The nature and the seriousness of the allegations levelled against the petitioner and her conduct are the relevant factors for the adjudication of the present petition. Investigation at this nascent stage cannot be allowed to be belayed.
10. In view of the aforesaid circumstances, this does not appear to be a fit case to grant discretionary relief of anticipatory bail to the petitioner. Consequently, the same is dismissed.
11. Needless to say nothing recorded hereinabove should be construed as expression on merits of the case.

(PANKAJ JAIN)
JUDGE

August 03, 2023
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Whether speaking/reasoned	Yes
Whether Reportable :	No