

206

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

CRM-M-59938-2022 (O&M)

Date of Decision : 12.10.2023

VIJAY KUMAR

.... Petitioner

VERSUS

STATE OF PUNJAB & ANR.

.... Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Arun Sharma, Advocate for

Mr. Ravi Malhotra, Advocate for the petitioner.

Mr. Adhiraj Singh Thind, AAG Punjab-respondent No.1.

Mr. Amit Dhawan, Advocate for respondent No.2/complainant.

ALKA SARIN, J. (ORAL)

1. This is a petition under Section 438 of the Code of Criminal Procedure, 1973 for grant of anticipatory bail to the petitioner in FIR No.123 dated 02.12.2022, under Sections 406, 498-A, 323 of the Indian Penal Code, 1860 registered at Police Station Women, District Police Commissionerate, Jalandhar.

2. On 22.12.2022 the following order was passed :

"Instant petition has been filed under Section 438 Cr.P.C. praying for grant of anticipatory bail to the petitioner in case FIR No.123, dated 02.12.2022, under Sections 406, 498-A, 323 IPC, registered at Police

Station Women, District Police Commissionerate, Jalandhar.

It has been contended by counsel for the petitioner that marriage of the petitioner was solemnized with the complainant on 22.02.2017 and thereafter they are blessed with two children. It is further submitted that at present elder son is with the petitioner/father whereas younger son is with respondent No.2/complainant. He has submitted that on account temperamental differences between both the husband and the wife, the matrimonial discord took place and respondent No.2/complainant left the matrimonial home on 03.05.2022. He submits that petitioner is ready to settle the dispute even now if the matter is referred to Mediation Centre. He relies upon Arnesh Kumar vs State of Bihar and another, 2014(3) SCC (Crl.) 449 and submits that in view of the aforementioned facts, no case for custodial interrogation is made out, however, he is ready to join the investigation and abide by all the terms and conditions of the anticipatory bail if this Court considers his request for granting the same.

Issue notice of motion for 18.04.2023.

Mr. Amit Dhawan, Advocate, who is present in Court,

accepts notice on behalf of respondent No.2/complainant and has opposed the submissions made by counsel for the petitioner.

On the asking of the Court, Ms. Ishma Randhawa, Additional Advocate General, Punjab, who is present in Court, accepts notice on behalf of the respondent-State.

Petitioner is also directed to pay Rs.25,000/- as litigation expenses to respondent No.2/complainant within one month from today.

In the meanwhile, in the event of arrest, the petitioner shall be released on interim bail subject to the satisfaction of the Arresting Officer/Investigating Officer. The petitioner shall join investigation before the Investigating Agency/Officer. He shall abide by the following conditions as envisaged under Section 438(2) Cr.P.C.:-

- “(i) That the petitioner shall make himself available for interrogation by a police officer as and when required to do so;*
- (ii) That the petitioner shall not directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to*

the Court or to any police officer;

(iii) That the petitioner shall not leave India without prior permission of the Court. ”

State is directed to file status report on or before the next date of hearing.”

3. Thereafter, learned counsel for the State had informed the Court that the petitioner had not cooperated with the investigating agency and the petitioner was directed to rejoin investigation vide order dated 18.04.2023.

4. On 17.08.2023 the following order was passed :

"Learned State counsel has pointed out that though some recovery has been effected, however, gold amounting to Rs.1,70,000/- is yet to be recovered.

Learned counsel for the petitioner states that in case the petitioner is granted sometime, he would pay the said amount to respondent No.2.

List on 12.10.2023.

Meanwhile, the petitioner, if he so desires, shall hand over the amount of Rs 1,70,000/- in lieu of gold to the complainant well before the next date of hearing.

Petitioner is directed to re-join investigation and cooperate with the Investigating Agency.

Interim order to continue"

5. Learned counsel for the petitioner states that he has no

instructions in the matter. Learned counsel further states that though on 17.08.2023 the statement was made that the petitioner would pay an amount of Rs.1,70,000/- in lieu of the gold to the complainant, however, subsequently, the petitioner has not contacted him.

6. Learned counsel for the State has pointed out that though the petitioner had been directed to rejoin the investigation on 18.04.2023 and 17.08.2023, he has not joined investigation. Learned counsel, on the instructions from ASI Rajesh Kumar states that the petitioner was called telephonically and on being asked to join investigation he had switched off his phone. Thereafter, the Investigating Officer has not been able to contact the petitioner.

7. In view of the above and in view of the conduct of the petitioner, this Court is left with no other option except to dismiss the present petition.

8. Dismissed. Pending applications, if any, also stand disposed of.

12.10.2023

Aman Jain

(ALKA SARIN)

JUDGE

NOTE:

Whether speaking/non-speaking: Speaking

Whether reportable: YES/NO