



229 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-6170-2023 (O&M)
Date of Decision: 27.11.2024

Resham Singh ...Petitioner

versus

State of Punjab and another ...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. K.S. Dadwal, Advocate
for the petitioner.

Mr. Sandeep Arora, Advocate
for respondent No.2.

Mr. Nitesh Sharma, DAG, Punjab.

HARPREET SINGH BRAR, J.(ORAL)

1. The present petition has been preferred under Section 482 Cr.P.C. seeking setting aside the condition of depositing Rs. 1,00,000/- to the account of respondent No.2, in order to make the anticipatory bail granted to the petitioner absolute. The said condition was imposed vide impugned order dated 17.01.2023(Annexure P-5), inadvertently mentioned as 03.01.2023 in the petition, stemming from FIR No. 139 registered under Sections 406, 498-A IPC at Police Station Bhogpur, Jalandhar Rural.

2. Learned counsel for the petitioner *inter alia* contends that in compliance of order dated 21.12.2022 (Annexure P-4), the petitioner had joined investigation and also handed over the dowry articles. Moreover, there are no specific allegations against the petitioner, who is the father-in-law of the respondent No.2-complainant. In fact, respondent No.2 is settled in Canada and has only resided in India for 19 days after marriage and 15 days thereafter. Respondent No.2 has also filed a complaint in Canada and the matter is pending before the concerned Court there, however, she has not revealed the factum of registra-



tion of FIR(supra) therein. The learned Court below has imposed the condition of depositing Rs. 1,00,000/- in order to make the anticipatory bail granted to the petitioner, absolute, without assigning any reasons for the same.

3. *Per contra*, learned counsel for respondent No.2 submits that serious allegations of harassment and misappropriation of dowry articles have been leveled against the petitioner. Therefore, the learned Court below has correctly imposed the said condition in order to ensure that the petitioner does not flee from the process of law.

4. Having heard the learned counsel for the parties and after perusing the record with their able assistance, it transpires that the son of the petitioner was married to respondent No.2 on 10.06.2018. Soon after marriage, in July 2018, respondent No.2 left for Canada. She returned to India in January 2019 for only 15 days. However, matrimonial discord ensued and the FIR(supra) was registered. After assessing the material available on record, the learned Court below granted interim anticipatory bail which was made absolute vide impugned order dated 17.01.2023(Annexure P-5) subject to depositing of Rs. 1,00,000/- in the account of respondent No. 2-complainant.

5. A two Judge bench of the Hon'ble Supreme Court in **Mursaleen Tyagi vs. State of Uttar Pradesh and another 2023(4)Law Herald (SC) 3399** held that ordinarily, onerous conditions should not be imposed for grant of bail and opined as follows:

"4. The grant of bail subject to onerous conditions, is ordinarily in exceptional circumstances and cannot be as a matter of course, in "Yashik Jindal v. Union of India" reported in 2023 SCC Online SC 417 under similar circumstances, this Court had observed as follows:

*"3. This Court has deprecated imposition of such onerous conditions previously-notably in the recent order in "**Subhash Chouhan v. Union of India**" (Criminal Appeal No. 186 of 2023) decided on 20.01.2023.*

*4. Following the order in **Subhash Chouhan v. Union of India**, the condition requiring the petitioner to deposit Rs.2 crores is*



hereby set aside. The Court is informed that the petitioner had borrowed sums of money and deposited the same. It is open for them to seek withdrawal/refund of such amounts. They shall, however, comply with the other conditions imposed on them."

6. Nothing on the record indicates that the petitioner would create any hindrances in the process of law. The nature and sufficiency of the recovery of dowry articles made from the petitioner is a matter of trial. The petitioner has duly joined investigation as directed while granting interim bail. No particular reason has been provided by the learned Court below as to the purpose of imposing such a condition. A two Judge bench of the Hon'ble Supreme Court in the celebrated judgment of ***Satender Kumar Antil vs. CBI, (2022) 10 SCC 51***, speaking through Justice M.M. Sunderesh, has observed as follows:

*"62. Under Section 440 the amount of every bond executed under Chapter XXXIII is to be fixed with regard to the circumstances of the case and shall not be excessive. This is a salutary provision which has to be kept in mind. The conditions imposed shall not be mechanical and uniform in all cases. It is a mandatory duty of the court to take into consideration the circumstances of the case and satisfy itself that it is not excessive. Imposing a condition which is impossible of compliance would be defeating the very object of the release. In this connection, we would only say that Section 436, 437, 438 and 439 of the Code are to be read in consonance. Reasonableness of the bond and surety is something which the court has to keep in mind whenever the same is insisted upon, and therefore while exercising the power under Section 88 of the Code also the said factum has to be kept in mind. This Court in ***Hussainara Khatoon & Ors v Home Secretary, State of Bihar, 1980 (1) SCC 81***, has held that:*

"8. In regard to the exercise of the judicial power to release a prisoner awaiting trial on bail or on the execution of a personal bond without sureties for his appearance, I have to say this briefly. There is an amplitude of power in this regard within the existing provisions of the Code of Criminal Procedure, and it is for the courts to fully acquaint themselves with the nature and extent of their discretion in exercising it. I think it is no longer possible to countenance a mechanical exercise of the power. What should be the amount of security required or the monetary obligation demanded in a bond is a matter calling for the careful consideration of several factors. The entire object being only to ensure that the undertrial does not flee or hide himself from trial, all the relevant considerations which enter into the determination



of that question must be taken into account. [Section 440, Cr.P.C.] A synoptic impression of what the considerations could be may be drawn from the following provision in the United States Bail Reform Act of 1966 :

In determining which conditions of releases will reasonably assure appearance, the judicial officer shall, on the basis of available information, take into account the nature and circumstances of the offence charged, the weight of the evidence against the accused, the accused's family ties, employment, financial resources, character and mental condition, the length of his residence in the community, his record of convictions, and his record of appearance at court proceedings or of flight to avoid prosecution or failure to appear at court proceedings. [18 US S. 3146(b)]

These are considerations which should be kept in mind when determining the amount of the security or monetary obligation. Perhaps, if this is done the abuses attendant on the prevailing system of pre-trial release in India could be avoided or, in any event, greatly reduced. See Moti Ram v. State of M.P. [(1978) 4 SCC 47]”

7. In view of the discussion above, the present petition is allowed.

The condition to deposit Rs. 1,00,000/- in the account of respondent No. 2, in order to make the interim anticipatory bail granted to the petitioner, absolute is hereby set aside.

8. The learned Court below is directed to pass appropriate orders reflecting the same.

9. Pending miscellaneous application(s), if any, shall also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

27.11.2024
Ajay Goswami

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