

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

218

CRM-M-13963-2024
Date of decision: 16.04.2024

KUSHAL JHUNEJA ALIAS JOXY

...PETITIONER

V/s

STATE OF PUNJAB

...RESPONDENT

CORAM: HON’BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Gursher Singh Dhillon, Advocate
for the petitioner.

Mr. Anup Singh, AAG, Punjab.

SUMEET GOEL, J.

1. This petition has been filed under Section 438 Cr.P.C. for grant of anticipatory bail to the petitioner in FIR No.105 dated 21.12.2023, registered for offences punishable under Sections 498-A, 406 of the Indian Penal Code, 1860, at Police Station Women, District SAS Nagar.

2. On 18.03.2024, the following order was passed:-

“Apprehending his arrest in FIR No.105 dated 21.12.2023 registered for offences punishable under Sections 498-A and 406 IPC at Police Station Women, District SAS Nagar; the petitioner has preferred this petition under Section 438 Cr.P.C. seeking pre-arrest bail.

Inter alia contends that the actual genesis of the FIR in question is a matrimonial discord between the petitioner and complainant- wife; petitioner is willing to return all the dowry articles/istridhan in his possession; petitioner is also ready for an amicable settlement & petitioner is willing to join investigation and cooperate therein in accordance with law. Notice of motion.

On asking of the Court, Mr. Adhiraj Singh Thind, AAG, Punjab, appears and accepts notice on behalf of the respondent-State. Adjourned to 16.04.2024.

The petitioner is directed to appear before the Investigating Officer on 22.03.2024 at 11:00 A.M. in concerned Police Station and join investigation. In the event of arrest, the petitioner shall be released on interim bail subject to his furnishing personal/surety bond(s) to the satisfaction of the Arresting Officer/Investigating Officer. As and when further called by Investigating Officer, the petitioner shall join the investigation. He shall abide by the condition(s) enumerated under Section 438(2) of the Cr.P.C.”

3. Learned State counsel, on instructions from ASI Mandeep Kaur, has stated that pursuant to the order dated 18.03.2024, the petitioner has joined investigation and is no longer required for custodial interrogation. However, learned State counsel as also the learned counsel for the complainant have submitted that only partial recovery of dowry articles has been effected and remaining dowry articles are yet to be recovered.

4. Learned counsel for the petitioner has submitted that no dowry articles/*Istri-dhan* are in possession of the petitioner and, in fact, the entire dowry articles/*Istri-dhan* is with the aggrieved-wife.

5. I have heard the learned counsel for the rival parties and have perused the paper book.

6. It will be apposite to refer to a judgment dated 12.02.2024 passed by this Court in CRM-M-60647-2023 titled as **“Varun Sharma Vs. State of Punjab and another”**, relevant whereof reads as under:

“11. As a sequel to the above said discussion, the following principle of law emerge :-

(I) Non-recovery of dowry articles/Istri-dhan cannot ordinarily be a ground, by itself, for declining a plea for grant of anticipatory bail to the husband or his relatives.

(II) The conduct of an accused, is indeed, a relevant factor for consideration of a plea for grant of anticipatory bail on behalf of such accused. Such conduct would also include the cooperation, in accordance with law, extended by such accused for recovery of dowry articles/Istri-dhan. Whether or not such cooperation was extended by the accused would be ascertainable from the facts and circumstances of a given case.

(III) In exceptional cases, if the peculiar and/or accentuating facts/circumstances of the case so warrant, a Court would be well within its discretion to pass a direction to the petitioner- accused to deposit in Court or remit to the complainant-wife an appropriate amount towards the Istri-dhan/dowry articles. Needless to state herein that it is neither possible nor desirable to enumerate a set of guidelines in this regard & a Court would have to exercise its judicial discretion in this regard in the facts and circumstances of a given case.”

7. Non-recovery of dowry articles/Istri-dhan in entirety thereof cannot, by itself, be a cause for rejection of the present plea for anticipatory bail by the petitioner especially when the State does not require custodial interrogation of petitioner on any other count except for effecting recovery of remaining dowry articles/Istri-dhan. The aspect, as to what all are the dowry articles/Istri-dhan in question in the present case & whether the entire dowry articles have been or not, shall be essentially gone into during the course of trial. No accentuating circumstances are decipherable, from the factual matrix of the present case, so as to direct the petitioner to deposit any

amount towards the alleged non-recovery of complete dowry articles. No such misconduct by the petitioner has been pointed out which may dissuade this Court from confirming the interim anticipatory bail to the petitioner.

8. In view of above, the petition is allowed and interim order dated 18.03.2024 passed by this Court is made absolute, subject to the conditions as enumerated under Section 438(2) Cr.P.C.

9. This order should not be treated as “blanket” order. It will not be interpreted as granting petitioner indefinite protection from arrest. It shall be confined to the FIR mentioned *ibid* and will not operate in respect of any other incident that involves commission of an offence.

10. Liberty is reserved in favour of State/complainant to move for cancellation/recall of this order in case the petitioner violates any condition stipulated under Section 438(2) Cr.P.C., 1973 or upon showing any other sufficient cause.

11. Needless to say that anything observed herein above shall not be construed to be an opinion on the merits of the case.

12. Pending application(s), if any, shall also stand disposed off.

(SUMEET GOEL)
JUDGE

April 16, 2024
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No