

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

2024:PHHC:062642



204

CRM-M-18776-2024

Date of Decision: 06.05.2024

Kuldeep Kumar @ Gabbar

.... Petitioner

Versus

State of Haryana

.... Respondent

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: - Dr. Anmol Rattan Sidhu, Senior Advocate with
Mr. Shiv Kumar Sharma, Advocate for the petitioner.

Mr. Surinder Kumar Dagar, DAG, Haryana.

Mr. Sushil K. Verma, Advocate for the complainant.

NIDHI GUPTA, J. (ORAL)

The petitioner who is the husband of the complainant has filed the present 1st petition under Section 438 Cr.P.C., seeking anticipatory bail in case FIR No. 292 dated 2.07.2023 (Annexure P-1) registered under Sections 323, 406, 498-A and 506 IPC read with Section 34 IPC (Sections 269, 270 and 419 IPC, were added later on) at Police Station Sirsa Sadar, District Sirsa.

On 19.04.2024, when this case was listed for hearing, following order was passed by this Court:-

“Prayer in this petition filed under Section 438 Cr.P.C. is for grant of anticipatory bail to the petitioner in case FIR No.292 dated 02.07.2023 (Annexure P-1), under

Sections 323, 406, 498-A, 506, 34 IPC (Sections 269, 270 and 419 IPC added later on), registered at Police Station Sadar Sirsa, District Sirsa.

Learned Senior Counsel for the petitioner submits that the petitioner was married to the complainant on 31.03.2018. On 29.07.2022, one daughter was born out of their wedlock, who is currently in the care and custody of the complainant. It is stated that there are three main allegations levelled against the petitioner in the present FIR. The first allegation is that a car was given by the parents of the complainant to the petitioner in the marriage. It is stated that the said car was damaged in an accident, in respect of which, the insurance claim amount of Rs.3,59,000/- was credited into the account of the petitioner by the Insurance Company on 27.07.2018. It is stated that perusal of the statement of bank account of the petitioner (Annexure P-8) shows that an amount of Rs.3,30,000/- was transferred in the account of father of the complainant, namely, Subhash Chander, vide entry dated 01.08.2018 and the rest of the amount was returned in cash. It is further stated that as per FIR, the second allegation against the petitioner is regarding the dowry articles, which were given to the petitioner and his family by the complainant side. Learned Senior Counsel for the petitioner with regard to the said allegation refers to the recovery memo dated 10.11.2023 (Annexure P-7), as per which, all the dowry articles have been duly returned to the complainant. Reference has also been made to the Panchayati compromise dated 07.08.2022 (Annexure P-9) entered into between the parties, wherein it was recorded that the gold articles have been returned by the petitioner and his family to the complainant. Learned Senior Counsel further very fairly submits that primary allegation against the petitioner is that the complainant contracted HIV from the petitioner. It has been stated in the FIR that the petitioner was HIV positive prior to the marriage, which fact was not disclosed to the complainant at the time of marriage. Learned Senior Counsel for the petitioner refers to the writing mentioned in the FIR at page 17 of the paper-book, wherein, it is mentioned that "...After that in the month of August 2020, the applicant contacted for IVF and the applicant was medically examined and it was found that the applicant is suffering from HIV..." Learned Senior Counsel contends that in view of the aforesaid writing, the fact that the petitioner was HIV positive, came into the knowledge of the complainant in August 2020, however, the FIR has been filed only on 02.07.2023. Learned Senior Counsel for the petitioner submits that the co-accused of the petitioner, who are the father-in-law, mother-in-law, brother-in-law/Jeth and sister-in-law/Jethani of the complainant, have already been granted the interim relief by this Court vide order dated 08.04.2024 passed in CRM-M-

17023-2024. Learned Senior Counsel undertakes that the petitioner will join the investigation and co-operate with the Investigating Agency.

Notice of motion.

On asking of the Court, Mr. Ranvir Singh Arya, Addl. A.G., Haryana accepts notice on behalf of respondent-State and opposes the prayer made in the present petition. Learned State counsel submits that the petitioner was found HIV positive as far back on 10.03.2017, prior to his marriage with the complainant, however, the said fact was not disclosed to the complainant at the time of marriage.

Adjourned to 06.05.2024.

In the meantime, the petitioner is directed to appear before the SHO/Investigating Officer to join investigation and in the event of his arrest, he shall be released on interim bail on his furnishing bail bonds to the satisfaction of SHO/Investigating Agency subject to the following conditions as envisaged under Section 438(2) Cr.P.C.:-

- i) that the petitioner shall make himself available for interrogation before the Investigating Officer as and when required;*
- 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/her from disclosing such facts to the Court or to any police officer ;*
- iii) that the petitioner shall not leave the country, without prior permission of the Court and shall surrender his passport, if any.*

Meanwhile, State counsel is directed to file an affidavit as to the exact role of the petitioner alongwith the details of pending FIRs, if any, on or before the next date of hearing.”

Learned Senior Counsel for the petitioner submits that in compliance of the aforesaid order, the petitioner has joined the investigation.

Reply/status report dated 03.05.2024, filed by way of affidavit of Ms. Deepti Garg, Additional Superintendent of Police, Sirsa, on behalf of respondent No. 1-State is taken on record. A copy thereof, has been supplied to learned Senior Counsel for the petitioner.

On instructions from L/ASI Deepa Rani, learned counsel for

the State states that in terms of the order passed by this Court, reproduced above, the petitioner has joined the investigation and is co-operating with the investigating agency, and no further interrogation is required, at this stage. Learned counsel for the State further informs that as per averments made in para 17 of the reply petitioner in the present case, namely, Kuldeep Kumar @ Gabbar and his father, namely, Raanjha Ram @ Ranjha Ram petitioner No. 1 (in CRM-M-17023-2024) were also convicted and sentenced to life imprisonment in a case arising out of FIR No. 154 dated 25.06.2009 registered under Sections 302, 148 and 149 IPC at Police Station Sadar, Fazilka.

However, learned counsel for the complainant vehemently opposes the prayer for grant of anticipatory bail to the petitioner. The only argument raised by learned counsel for the petitioner is that though the petitioner has joined the investigation, however, still recovery of dowry articles is yet to be effected from him.

I have heard learned counsel for the parties.

Hon'ble the Supreme Court in **Bimla Tiwari vs. State of Bihar and others, Law Finder Doc ID # 2110551**, has held that "matter of grant of bail is not akin to money recovery proceedings", which has been relied upon by a co-ordinate Bench of this Court in its recent judgment dated 12.02.2024, passed in **CRM-M-60647-2023, 'Varun Sharma vs. State of Punjab and another'..**

In view of the above, the order dated 19.04.2024 granting interim bail to the petitioner is made absolute.

However, the petitioner shall abide by the conditions stipulated under Section 438(2) Cr.P.C. He shall also join the

investigation and co-operate with the investigating agency in case he is required for the same in future as and when called upon to do so.

In case, at any given point of time hereinafter, it is felt by the investigating agency that the petitioner is required for the investigation but is not cooperating, they will be at liberty to approach this Court for passing appropriate orders.

The petition stands disposed of.

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

06.05.2024
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(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No