

CRM-M-20222-2023

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-20222-2023

Date of decision: 14.03.2024

Kahna Ram

....Petitioner

V/s

State of Punjab and another

....Respondents

CORAM: HON’BLE MR. JUSTICE SUMEET GOEL

Present : Mr. Vishal Mittal, Advocate for the petitioner.

Mr. Anup Singh AAG Punjab.

Mr. SPS Tinna, Advocate with Ms. Anju Arora, Advocate with
Ms. Manpreet, Advocate for the complainant-respondent No.2.

SUMEET GOEL, J. (Oral)

1. This petition has been filed under Section 438 Cr.P.C. for grant of anticipatory bail to the petitioner in FIR No.19 dated 04.04.2023, registered for offences under Sections 406 and 498-A of the Indian Penal Code, 1860, at Police Station Khui Khera, District Fazilka.

2. On 25.04.2023, the following order was passed:-

“At the outset, learned counsel for the petitioner contends that the petitioner is ready to settle the matter with the complainant and save his marriage out of which there is a child, aged three years. It is also contended that the petitioner has filed a petition for restitution of conjugal rights before the Family Court.

Notice of motion for 17.5.2023, subject to the petitioner depositing an amount of Rs.35,000/- as litigation and travelling expenses by way of a demand draft in the name of respondent/wife in the Registry of this Court, within a period of one week from today. The said demand draft shall be handed over to the respondent/wife on her appearance before this Court.

In the meanwhile, the arrest of the petitioner shall remain stayed to facilitate mediation.”

3. On 22.11.2023, the following order was passed:-

“1. Present petition is under Section 438 Cr.P.C. for seeking anticipatory bail to the petitioner in case FIR No.19 dated 04.04.2023 registered under Sections 406-498-A IPC at Police Station Khui Khera, District Fazilka, Punjab.

2. In terms of order dated 25.04.2023, the arrest of the petitioner was stayed to facilitate mediation.

3. As per the report received from the Mediator, despite efforts, the parties could not arrive at an amicable settlement.

4. Learned counsel for the petitioner contends that the marriage of the petitioner was solemnized about 04 years prior to the registration of the FIR and a daughter has been born from the wedlock. The FIR has been lodged on the basis of false allegations. The petitioner is ready and willing to return all the articles of Istri Dhan which may be in his possession. Moreover, the parents of the petitioner have been granted interim bail and recovery of some golden jewellery has been effected. The allegations were also levelled against the brother of the petitioner with regard to outraging the modesty of the complainant but neither he has been arraigned as accused nor the Penal provision of Section 354 IPC has been invoked in the instant case.

5. On instructions from HC Ram Singh, learned State counsel submits that the parents of the petitioner have got recovered 2 tolas of golden jewellery.

6. Learned counsel for the complainant has submitted that there are serious allegations with regard to outraging the modesty attributed against the brother of the petitioner, who is employed in Punjab police but he has not been arraigned as an accused in the instant case. Furthermore, the petitioner at the earlier instance had filed a petition under Section 9 of Hindu Marriage Act for restitution of conjugal rights. Later on, the said petition was withdrawn and the petition under Section 13 of Hindu Marriage Act for dissolution of marriage has been instituted. The articles of Istri Dhan are with the petitioner.

7. Adjourned to 06.02.2024.

8. Meanwhile, it is directed that in the event of arrest, the petitioner be admitted on interim bail on furnishing bail bonds to the satisfaction of the Arresting Officer subject to the condition that he joins the investigation and comply with other conditions as specified under Section 438(2) Cr.P.C.”

4. As per the report dated 20.02.2024 send to this Court, mediation proceedings could not fructify.

5. Learned State counsel, on instructions from ASI Birbal Singh, has stated that pursuant to the order dated 22.11.2023, 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.

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

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

8. 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 principles 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.”

9. Non-recovery of dowry articles/Istridhan 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/Istridhan. The aspect, as to what all are the dowry articles/Istridhan in question in the present case & whether the entire dowry articles have been recovered 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.

10. In view of above, the petition is allowed and interim order dated 22.11.2023 passed by this Court is made absolute, subject to the conditions as enumerated under Section 438(2) Cr.P.C.

11. 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.

12. 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.

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

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

(SUMEET GOEL)
JUDGE

March 14, 2024
Ajay

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