IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

106 **CRM-M-23370-2020 (O&M)**
Date of Decision : February 07, 2024

VIJAY MAHAJAN **-PETITIONER**

V/S

STATE OF PUNJAB AND ANR. **-RESPONDENT**

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Keshav Partap Singh, Advocate
for the petitioner.

Mr. Digvijay Nagpal, A.A.G., Punjab.

Mr. R.S. Bains, Sr. Advocate assisted by
Mr. Aman Raj Bawa, Advocate and
Mr. Anmol Deep Singh, Advocate
for the complainant.

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KULDEEP TIWARI, J. (ORAL)

1. Through this second petition, the petitioner, an affluent property dealer, again craves for indulgence of this Court, for him being enlarged on regular bail, in case FIR No.30 dated 24.02.2016, under Sections 494, 420, 467, 468, 471, 120-B of the IPC, registered at P.S. Division No.4, Ludhiana.

2. The petitioner has, in order to escape from the clutches of law, used all dilatory tactics and made false assurances, which unfortunately resulted in his remaining successful too, to some extent, inasmuch as, consequent upon his arrest in the present FIR, he enjoyed liberty either through reaping the concession of interim anticipatory bail, or, interim bail.

3. Since the present case has a chequered history, therefore, before proceeding to gauge the merits of the instant petition and penning

down any opinion, it would be apt to initially enumerate the factual backdrop of the case.

4. The genesis of the prosecution case is embodied in the complaint made by one Sonika Mahajan, wife of the petitioner, (hereinafter referred to as the 'complainant'), on the allegations that, the petitioner had, during subsistence of his first marriage with her, solemnized second marriage with one Neha. She further alleged that the petitioner had even forged her income tax returns and used the same in the proceedings of their matrimonial cases.

5. In the instant case, the petitioner had solemnized marriage with the complainant on 17.01.2000, which resulted in them becoming blessed with three children, who are now grownups. However, in the year 2011, the petitioner abandoned his family and subsequently, in the year 2013, he even filed a divorce petition. Shockingly, during pendency of the divorce petition and during subsistence of his marriage, the petitioner performed another marriage with one Neha on 24.03.2014. The second marriage of the petitioner was confirmed in a police raid, whereupon, he was found living with another woman.

6. It would be apt to record here that, during investigation, the police seized the copy of a divorce order passed by the Supreme Court of British Columbia, thereby dissolving the marriage of the complainant with the petitioners. However, the said divorce order is of no significance, inasmuch as, neither the marriage of the complainant and petitioner occurred there, nor they ever visited there.

7. Since the petitioner had abandoned the complainant and their children, and, was not maintaining them, the latter were constrained to

institute a maintenance petition under Section 125 of the Cr.P.C. Through the maintenance petition (supra), the complainant and her children yielded fruits, inasmuch as, vide order dated 17.05.2014, maintenance pendente lite @ Rs.95,000/- per month was awarded to them.

8. The petitioner had, instead of making payment of maintenance (supra), and, in order to avoid his liability of maintenance, dragged the complainant upto the Hon'ble Supreme Court, however, his efforts turned futile, inasmuch as, the Special Leave Petition preferred by the petitioner against the maintenance order (supra) was dismissed in limine vide order dated 06.02.2015. Moreover, the divorce petition (supra) was also dismissed by the learned Court concerned in the year 2015.

9. Consequent upon registration of the present FIR, since the petitioner failed to secure the relief of anticipatory bail from the learned trial Court concerned, he accessed this Court by filing CRM-M-15960-2016 and was successful in obtaining the relief of anticipatory bail vide order dated 08.09.2017. This relief of anticipatory bail was anchored upon a settlement proposal, besides being made and assured to be fulfilled by the petitioner, becoming accepted by the complainant also. The relevant extract of order dated 08.09.2017 is reproduced hereinafter:-

> *"...A settlement has been reached between the parties that the petitioner-husband shall transfer Flat No.28, First Floor, Nirmal Chayya Apartment, Block No.C, Near Mata Nirmal Gujri Gurudwara, Rishi Nagar, Ludhiana, in the name of the complainant-wife. He shall further transfer one property equivalent to the value of Rupees ninety lakh or the property equivalent to the value of Rupees seventy lakh and the remaining amount of Rupees twenty lakh by way of demand draft or through RTGS in favour of the children. The petitioner shall indicate the property which he proposes to transfer in the name of the children within two weeks*

from today. The valuation of the said property shall be done by a mutually agreed surveyor, certified/approved by the PUDA/Improvement Trust. The value of such property should be approximately Rupees seventy lakh and free from all encumbrances. After identifying such a property, the petitioner shall transfer the same immediately in the name of the children and the balance amount of Rupees twenty lakh be paid by way of demand draft or through RTGS in favour of the children, within a month thereafter. The complainant-wife/respondent No.2, present in person, states that this proposal is acceptable to her and she shall withdraw all the cases filed by her against the petitioner or his family members. She further undertakes to file a joint petition under Section 13-B of the Hindu Marriage Act before the competent Court and make a statement that the compromise has been reached..."

10. Since the assurance (supra) was made by the petitioner only with a *malafide* intention to secure his liberty, without there being any intention on his part to make efforts to honor the same, the complainant was driven to move an application bearing No. CRM-34550-2017, in CRM-M-15960-2016, thereby seeking cancellation of bail, as granted to the petitioner vide order dated 08.09.2017. However, even then the petitioner, with sheer *malafide* intent to impede the expeditious adjudication of the application (supra) and to enjoy his liberty, took recourse to dilatory tactics, by making assurances before this Court that he is in the process of complying with his undertaking(s)/term(s) of settlement. Such conduct of the petitioner constrained a Co-ordinate Bench of this Court to, through drawing an order on 22.05.2018 upon the application (supra), recall the bail order dated 08.09.2017 and dismiss the petitioner's bail application, by recording a finding that the statement/assurance made by the petitioner, was in fact made with a malafide intention to secure bail and to frustrate the right of the complainant. The relevant extract of order dated 22.05.2018 is

reproduced hereinafter:-

> *"...It is contended by the learned counsel for the applicant/respondent No.2/complainant/wife that vide order dated 08.09.2017 non-applicant/petitioner Vijay Mahajan, husband of the complainant had undertaken to transfer Flat No. 28, First Floor, Nirmal Chayya Apartment, Block No. C, Near Mata Nirmal Gujri Gurudwara, Rishi Nagar, Ludhiana in the name of applicant/complainant and further transfer one property equivalent to the value of Rupees ninety lakh or the property equivalent to the value of Rupees seventy lakh and the remaining amount of Rupees twenty lakh by way of demand draft or through RTGS. Thereafter, the parties had agreed to move a petition under Section 13-B of the Hindu Marriage Act. It is asserted that the statement made by Vijay Mahajan was made with malafide intention as the undertaking made before this Court was not complied with.*
>
> *Heard.*
>
> *Despite repeated opportunities granted by this Court, the undertaking made before this Court has not been complied with. In the circumstances, it emerges that the statement before this Court was made with a malafide intention to secure bail and frustrate the right of the applicant/respondent No.2/wife. The applicant is the wife of non-applicant/petitioner. As the non-applicant/petitioner did not approach this Court with clean hands, the prayer for revival is allowed and the order dated 08.09.2017 is recalled and the bail application is dismissed."*

11. Fetching grievance from the order (supra), the petitioner rushed to the Hon'ble Supreme Court and instituted thereagainst a SLP (Crl.) No.007310 of 2018, however, the same was also dismissed on 09.10.2018. Interestingly, the efforts of the petitioner did not pause here, as he yet again filed another anticipatory bail application bearing No. CRM-M-456-2019 before this Court, however, his efforts did not derive the desired results and his bail application (supra) was dismissed vide order dated 10.01.2019.

12. When the petitioner, despite him being twice declined the relief

of anticipatory bail by this Court and even by the Hon'ble Supreme Court, did not join the investigation, he was declared a "Proclaimed Offender" on 12.03.2019. Finally, with great difficulty and efforts made by the complainant, the petitioner was arrested by the investigating agency on 26.07.2019.

13. Consequent upon his arrest, since the petitioner could not secure bail from the learned courts below, he approached this Court by filing CRM-M-46938-2019, thereby seeking the concession of regular bail. However, this petition was withdrawn by the petitioner on 15.05.2020, inasmuch as, during pendency thereof, the petitioner was, vide order made by the learned Magistrate concerned on 30.04.2020, granted the concession of bail on technical grounds, under Section 437(6) of the Cr.P.C. However, before the petitioner could be released from custody, the complainant moved a revision petition against the order dated 30.04.2020, which was allowed vide order dated 26.05.2020. Though the petitioner assailed the order dated 26.05.2020 and sought its quashing by filing CRM-M-14055-2020 before this Court, however, he remained unsuccessful, as the said petition was dismissed on 04.06.2020. Thereafter, the petitioner filed a third regular bail application before the learned Additional Sessions Judge concerned, which was also dismissed vide order dated 18.07.2020.

14. Finally, the petitioner has now, for the second time, approached this Court through the instant petition, thereby seeking the relief of regular bail. However, what emerges from the record available before this Court, is that, the petitioner has again been using his malicious tactics to secure bail. The reason for forming this inference generates from the factum that, at the onset of the instant petition, the petitioner had, in order to secure interim

bail, again tendered a false assurance before this Court that he is ready and willing to comply with his undertaking/terms of settlement, as recorded in the order made by this Court on 08.09.2017, and consequently, he was granted interim bail by this Court, vide order dated 28.08.2020. The relevant extract of order dated 28.08.2020, wherein becomes enclosed the false assurance of petitioner, which constituted the bedrock for his interim bail, is reproduced hereinafter:-

> *"....Without going into the allegations and counter-allegations, at this stage, learned Senior counsel very fairly states that regardless of the differences between the complainant and the petitioner, in the interest of the children, he is willing to make alternative arrangements of buying two flats of the equivalent value as per his undertaking recorded in the order dated 08.09.2017.*
>
> *Learned Senior counsel for the complainant under instructions submits that the said offer is not genuine, as the petitioner does not own one of the flats i.e. one currently being used by the complainant and her children and therefore, cannot transfer the same.*
>
> *Be that as it may, it seems fair that in case petitioner shall buy an alternative flat/house of equivalent value, as per his undertaking. In order to test his bonafide, this Court deems it fit that petitioner be released on interim bail for a period of 14 weeks, with effect from the date of his release, subject to the condition that he shall purchase/transfer one flat, of the equivalent value, in which the complainant and the children are currently residing.*
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> *On his being able to fulfil this condition, his request for extension of interim bail would be considered in order to comply with rest of his undertaking contained in the order dated 08.09.2017.*
>
> *Accordingly, petitioner is directed to be released on interim bail subject to his furnishing bail bonds/surety bonds to the satisfaction of the Chief Judicial Magistrate/Duty Magistrate, as the case may be..."*

15. Interestingly, based upon his false assurance (supra), not only the petitioner secured interim bail, but, under the protective umbrella of the

order (supra), he even managed to get the proceedings concerning execution of order of maintenance (supra), as pending before the executing court concerned, adjourned *sine-die*. In this way, since 2020, the petitioner has been using dilatory tactics by time and again making false assurances that he is in the process of complying with his undertaking/term(s) of settlement.

16. It would be pertinent to record here that, to facilitate hassle free transfer of flat(s) in the favour of the complainant, as per undertaking of the petitioner, this Court had even impleaded the Improvement Trust, Ludhiana, as a party in the instant petition. However, impleadment of the Improvement Trust concerned also did not bring any fruitful results, inasmuch as, there was no *bona fide* intention of the petitioner behind furnishing the undertaking, rather he had deployed the said undertaking as a devious mechanism to breathe in open air. In fact, it was never the intention of the petitioner to part with any of his properties, or, belongings, in favour of his wife and children.

17. It would also be apt to record that, on request of the petitioner, the matter had even been referred to Mediation and Conciliation Centre of this Court, however, mediation did not reap any gainful output, as it was a sheer dilatory tactic on the part of the petitioner.

18. The record/interim orders make it apparent that the petitioner has continuously been changing his stance. It is a classic case, where the petitioner had, just to keep enjoying the relief of interim bail, which was granted to him approx. 3½ years back, made false assertions/assurances and used every legal tool to delay the adjudication of the instant petition.

19. In the above facts and circumstances, when neither mediation could resolve the dispute *inter se* the petitioner and the complainant, nor the

petitioner complied with his undertaking/ term(s) of settlement, this Court had directed the petitioner to surrender before the learned trial Court concerned. However, despite specific directions, the petitioner did not surrender, owing to a lame excuse that, since the certified copy of the interim order was available with him, he could not make compliance thereof. Moreover, he again beseeched a weeks' time for make compliance of his undertaking/term(s) of settlement, which was granted by this Court, only for the purpose of securing a better future for the grownup children of the petitioner and complainant. However, the request (supra) is again found to be false, as neither the petitioner surrendered, nor made compliance of his undertaking/term(s) of settlement, as recorded in the order dated 08.09.2017, rather has flatly refused to make compliance thereof.

20. Though it appears to be a matrimonial discord *inter se* the petitioner and the complainant, however, taking into account the gravity of the allegations, vis-à-vis, solemnization of second marriage during subsistence of previous marriage, and, forging of income tax returns to deprive the complainant of her legal right of maintenance, this Court is not inclined to grant the relief of regular bail to the petitioner. What lends vigour to the conclusion of this Court, is the fraud played by the petitioner upon this Court, inasmuch as, he secured interim bail from this Court by making a false statement/assurance qua compliance of his undertaking, as recorded in the order dated 08.09.2017. He kept on repeating his false assurances for the past 3½ years just to reap the benefits of interim bail. Therefore, the *mala fide* intention of the petitioner, besides his disrespectful and misleading conduct dis-entitles him from him being granted the relief of regular bail. Consequently, the instant petition is **dismissed,** with exemplary

cost of Rs.1,00,000/- to be forthwith deposited by the petitioner with the learned trial Court concerned**.** Since the petitioner has not, in compliance of directions made by this Court, surrendered before the learned trial Court concerned, therefore, the S.H.O. of the jurisdictional police station concerned is directed to forthwith arrest him, and thereupon, produce him before the learned trial Court/Illaqa Magistrate/Duty Magistrate concerned, for the latter to take appropriate legal action against him.

21. Moreover, since it has been informed to this Court that huge arrears of maintenance are outstanding and recoverable from the petitioner, therefore, this Court deems it appropriate to direct the learned trial Court to, in the eventuality of cost (supra) becoming deposited with it, release the same in favour of the complainant, upon her making an appropriate application in that regard.

22. Pending application(s) stand disposed of accordingly.

(KULDEEP TIWARI)
JUDGE

February 07, 2024
devinder

Whether speaking/reasoned	**:**	**Yes/No**
Whether Reportable	**:**	**Yes/No**