

2024:PHHC:079760
HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

109-CRM-M-29677-2024
Decided on 11.06.2024

Gaurav Suri ... Petitioner

VS.

State of Punjab & Anr. ... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. GS Simble, Advocate for the petitioner

Mr. Jaspal Singh Guru, AAG Punjab

Sandeep Moudgil, J.

1. The petitioner has filed the instant petition under Section 438 CrPC seeking anticipatory bail in case FIR No.52 dated 21.03.2023 under Section 406 IPC registered at Police Station Talwandi Sabo, District Bathinda.
2. Learned counsel for the petitioner submits that the marriage between the petitioner-Gaurav Suri and the complainant-Amolak Pargas Kaur @ Rozy was solemnized on 05.11.2017 and there is one female child born out of their wedlock. He further submits that due to strained relationship, the complainant-wife left the company of the petitioner which ultimately led to dissolution of marriage under Section 13 HMA vide judgment dated 23.03.2021 (Annexure P2).
3. Notice of motion. Mr. Jaspal Singh Guru, AAG Punjab accepts notice on behalf of respondent No.1.
4. Ms. Navneet Kaur, Advocate has filed vakalatnama on behalf of respondent No.2, which is taken on record. She vehemently opposed the

prayer for grant of anticipatory bail to the petitioner on the ground that he has misappropriated the Istridhan of the respondent No.2 and as such recovery is to be effected and for that purpose, his custodial interrogation is required. She further submits that the respondent No.2 has challenged the decree of divorce in an appeal before this Court.

5. It is also not disputed that the parties have already got divorce vide judgment (Annexure P2) for which an appeal has been preferred which is pending adjudication before this Court. Moreover, the parties have parted their ways before the matrimonial court under Section 13 of Hindu Marriage Act, 1955 for dissolution of marriage and as such the *prima facie* the offence as alleged under Section 406 IPC seems to be concocted and a tool of harassment.

6. Another aspect to be borne in mind is that it is the petitioner preferred the divorce petition which was instituted on 28.09.2020 and the same was decided on 23.03.2021 (Annexure P2) whereas the instant FIR came to be lodged on 21.03.2023 under Section 406 IPC which is nothing but a counter-blast to the divorce petition filed by the husband-petitioner.

7. Be that as it may, as far as the allegations and the version made in the FIR qua Section 406 IPC is concerned that is a matter of trial Court on the basis of evidence to be led by the respective parties, therefore, no purpose would be served by sending the petitioner behind the bars wherein it is apparent on record that the instant FIR has been got registered at a belated stage i.e. after more than 2½ years of institution of the divorce petition and in that as well the respondent-wife deliberately opted not to appear and to stay away from those proceedings leaving no other option for the matrimonial

Court but to pass an *ex parte* decree under Section 13 for divorce on account of cruelty as alleged by the husband therein.

8. In the light of aforesaid submissions made by respective parties, the petitioner deserves the concession of anticipatory bail wherein nothing concrete has been put forth before this court by the State counsel which could mandate custodial interrogation of the petitioner as far as this petition is concerned.

9. In the light of above, the petitioner is directed to be released on anticipatory bail subject to his joining investigation with the Investigating Officer concerned within a period of one week from today, on furnishing of personal/surety bonds to his satisfaction. The petitioner shall also abide by the terms and conditions as envisaged under Section 438(2) of Cr.P.C.

10. However, it is made clear that in case the petitioner does not comply with the aforesaid direction of joining the investigation within one week, the order passed by this Court today shall automatically stands cancelled.

11. The petition in the aforesaid terms stands allowed.

11.06.2024
V.Vishal

(Sandeep Moudgil)
Judge

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

Yes/No
Yes/No