



CRM-M-30554-2024

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CRM-M-30554-2024

Date of decision: 23.09.2024

Bhanu Partap Nayar

...Petitioner

V/s

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. J.K. Singla, Advocate with
Mr. Kashish Garg, Advocate for the petitioner.
Mr. Anup Singh AAG Punjab.
Mr. Gaurav Vir Singh Behl, Advocate for the complainant.

SUMEET GOEL, J. (Oral)

1. Present petition has been filed under Section 438 of Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') for grant of anticipatory bail to the petitioner in case FIR No.0004 dated 28.05.2024, under Sections 498-A and 406 IPC registered at Police Station Women, District Bathinda.
2. The gravamen of the FIR in question relates to demand of dowry, harassment and cruelty being meted out to the complainant by her husband (petitioner-herein) and father-in-law, mother-in-law, maternal aunt of husband, brother-in-law, respectively. It has been alleged by the complainant that her marriage was solemnized with the petitioner on 13.04.2021. Sufficient dowry was given at the time of marriage including 20 lacs cash, gold kara, chain, ring etc. Despite this, complainant's in-laws continuously demanded more dowry, including a car and insulted the complainant for being from a poor family. The complainant has further alleged that the petitioner and his family members subject her to mental and



physical harassment and continuously kept on pressurizing her to meet their dowry demands. They frequently insulted the complainant, stating that the dowry given was insufficient and humiliated her in front of others. Despite her best efforts to maintain peace in the matrimonial home, the demands of the accused for more dowry escalated and she was threatened with dire consequences if their demands were not fulfilled which caused her immense distress and fear for her safety. The complainant was physically and mentally abused, especially on 28.11.2021, when she was locked in a room and beaten up for not fulfilling the dowry demands. On 29.11.2021, the parents of the complainant were insulted when they visited her. It has also been alleged that the complainant's in-laws refused to allow the complainant to return to her matrimonial home after the birth of her daughter on 25.06.2022, expressing their dis-satisfaction over the birth of a girl child instead of a son. Multiple attempts were made by the parents of the complainant and relatives to reconcile the matter and rehabilitate the complainant but the same could not be fructified. The complainant's in-laws persisted in their demands for additional dowry. Furthermore, they misappropriated the stridhan of the complainant and continued to harass her both emotionally and physically. The complainant has requested that legal action against her husband, in-laws and other family members for their role in dowry harassment, physical abuse and desertion and hence an FIR *ibid* was got registered.

3. On 26.06.2024, the following order was passed:

“Apprehending his arrest in FIR No. 0004 dated 28.05.2024 registered for offences punishable under Sections 498-A, 406 IPC at Police Station Women, District Bathinda; the petitioner has preferred this petition under Section 438 Cr.P.C. seeking pre-arrest bail.



Inter alia contends that genesis of the FIR in question is the matrimonial discord between the petitioner and complainant-wife; petitioner is willing for an amicable settlement as well; & the petitioner is willing to join investigation and cooperate therein as also make endeavour to have the dowry articles recovered which are in his possession.

Notice of motion.

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

Mr. Gaurav Vir Singh Behl, Advocate has filed vakalatnama for the complainant. The same be taken on record.

Adjourned to 17.07.2024.

The petitioner is directed to appear before the Investigating Officer on 29.06.2024 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.

The respective parties (through their respective counsel) are directed to appear before Mediation and Conciliation Centre of this Court on 01.07.2024. On such appearance made by the complainant-wife, the petitioner-husband shall furnish an amount of Rs.50,000/- to the complainant-wife towards litigation/travelling expenses. A report be sent to this Court by the Mediation and Conciliation Centre of this Court on or before the next date of hearing.”

4. Learned counsel for the petitioner contends that the genesis of the FIR in question is the matrimonial discord between the petitioner and complainant-wife; petitioner is willing for an amicable settlement as well & the petitioner is willing to join investigation and cooperate therein, as also make endeavour to have the dowry articles recovered which are in his possession.

5. Learned State counsel, (on instructions from the concerned investigating officer), has submitted that the petitioner had joined

investigation pursuant to order dated 26.06.2024 passed by this Court but



was not cooperating therein. Thereafter, repeated opportunities were granted to the petitioner to join investigation. Learned State counsel has submitted that the petitioner is deliberately misusing the interim protection earlier granted to him. Further; learned State counsel has relied upon the status report dated 15.09.2024 (by way of affidavit of Veerpal Kaur, Deputy Superintendent of Police, Crime against Women & Children, Bathinda); relevant whereof reads as under:

“10. That during investigation, on dated 28.06.2024, accused/petitioner Bhanu Partap Nayyar had appeared before investigating officer along with order dated 26.06.2024 passed by the Hon'ble High Court in the present petition, wherein the Hon'ble High Court had granted interim relief of joining investigation to the accused/petitioner Bhanu Partap Nayyar. The investigating officer, in compliance of said order, joined him into investigation while preparing respective memos of arrest, rank, intimation, information and personal search and ultimately released on bail. But during joining investigation, the accused/ petitioner Bhanu Partap Nayyar did not got recover any article of dowry of complainant Paramjeet to the investigating officer rather under the umbrella of anticipatory bail, he did not fully co-operate with the investigating officer.

11. That during pendency of present petition, the Hon'ble High Court had again granted interim relief of anticipatory bail to accused/ petitioner Bhanu Partap Nayyar vide order dated 17.07.2024. The accused/petitioner Bhanu Partap Nayyar had appeared before the investigating officer on dated 22.07.2024 along with said order and the investigating officer, in the compliance of order, had second time joined him into investigation but still he did not fully co-operate with the investigating officer while not recovering any dowry articles of complainant Paramjeet.

12. That thereafter for the third time, Hon'ble High Court had granted interim relief of anticipatory bail to accused/petitioner Bhanu Partap Nayyar vide order dated 05.08.2024. The accused/petitioner Bhanu Partap Nayyar had appeared before the investigating officer on dated 09.08.2024 along with said order and the investigating officer, in compliance of order, had third time joined him into investigation but even then he had been struck to his illegal deeds and again did not fully co-



operate with the investigating officer and not got recovered even any single dowry article of complainant Paramjeet.”

6. Learned counsel appearing for the complainant have opposed the grant of anticipatory bail to the petitioner, by arguing that the serious allegations have been made against the petitioner for which custodial interrogation of petitioner is required & the petitioner is intentionally avoiding to return all the dowry articles/Istridhan including the gold articles in his possession and hence misusing the concession of interim protection accorded to him by this Court. Thus, it has been prayed that the present petition ought to be rejected.

7. I have heard the learned counsel for the parties and have gone through the available records of the case.

8. It would be apposite to refer herein to a judgment passed by this Court titled as ***Dilpreet Singh vs. State of Punjab and another: 2024:PHHC:007557***, relevant whereof reads as under:

“10. As an epilogue to above discussion, the following principles of law can be culled out:

(1) *A person, having apprehension of being arrested for offence(s) punishable by a maximum jail term of seven years, can make a plea for grant of pre-arrest/anticipatory bail on ground of apprehension of violation by police of Sections 41/41-A of Cr.P.C., 1973 & cannons of law enunciated by Hon'ble Supreme Court in the cases of MD. Asfak Alam vs. The State of Jharkhand & anr. 2023(3) RCR (Criminal) 754, Arnesh Kumar vs. State of Bihar and another (2014) 8 SCR 128 & Mohammed Zubair vs. State of NCT of Delhi & Ors. 2022 LiveLaw (SC) 629. Such a plea by a person has to be dealt with by a Court in consonance with the ratio decidendi of these Supreme Court judgments & statutory framework of Sections 41/41-A of Cr.P.C, 1973*

(II) *The conduct of an accused is an essential factor required to be considered by a Court while adjudicating upon a plea made by such an accused for grant of pre-arrest/anticipatory bail. An accused cannot seek shelter of provisions of Sections 41/41-A of Cr.P.C. de hors his conduct. Such*



conduct has to be ascertained at all stages including the conduct of such accused before filing the plea for anticipatory bail as also during the period the accused is granted interim protection (if it has been so granted) by a Court. The conduct of an accused after decision of such a plea in his favour will, of course, be subject matter of a petition for cancellation of such anticipatory bail (if situation so arises).

(III) For considering conduct of an accused, the Court would be required to look into the following aspects:-

- (a) whether the accused is making himself available for interrogation by the investigating officer as and when required by such investigating officer.*
- (b) whether the accused is, directly or indirectly, making any inducement/threat/promise to any person(s) acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Courts/Investigating Officer.*
- (c) whether the accused has made any attempt to leave India without the requisite permission from the concerned competent Court.*
- (d) whether such accused has been involved in commission of any other offence during the pendency of the FIR in question.*

The above said factors are only illustrative in nature since no exhaustive list of factors can be laid-down as every case has its own peculiar facts/circumstances.”

8.1. In a judgment titled as ***Varun Sharma vs. State of Punjab and another: 2024:PHHC:019691***, this Court has held 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. A perusal of the factual matrix of the case in hand reflects that the petitioner is deliberately misusing the interim protection earlier extended to him. The petitioner has been repeatedly granted opportunity to join the investigation and cooperate therein in accordance with law, but he has chosen not to avail those opportunities & has shown deforciant conduct.

10. Though the interim protection earlier granted to the petitioner does not deserve to be recalled/vacated only on account of the entire dowry articles having not been recovered, but nonetheless the conduct of the petitioner in making *bona fide* effort to have the same recovered cannot be given a complete go by. It is, thus, indubitable that the petitioner is misusing the interim protection earlier accorded to him.

11. Furthermore, it is worthwhile to note that the conduct of the accused is a crucial factor in determining whether the anticipatory bail should be granted or not. While adjudicating upon a plea for pre-arrest bail, the Court must take into account the accused's conduct before and after filing of the plea, as well as during the period for which any interim protection has been granted. One of the very factors relating to conduct of accused is his availability for interrogation and willingness to co-operate therein with investigation including for recovery of dowry articles/istridhan.

Questionable conduct, on part of the accused, may disentitle him for grant of

anticipatory bail. It is pertinent to note that the interim protection is extended



to ensure that no undue hardship is caused to an accused during the pendency of investigation but it cannot be permitted to serve as a shield for obstructing the course of justice. The continuous disregard by the petitioner with regard to non-cooperation, hampers the investigation process and delays the dispensation of justice. The conduct of the petitioner is not at all acceptable and he cannot be permitted to misuse the Court’s leniency, while showing complete disregard for the directions issued by it. The repeated failure to cooperate with the investigation raises serious doubts about the intent and good faith of the petitioner.

12. Keeping in view the entirety of facts/circumstances of the present case, no cause is made out for making absolute the interim anticipatory bail granted to the petitioner vide order dated 26.06.2024 passed by this Court. Accordingly, the present petition is devoid of merits and is hereby dismissed.

13. Any observations made and/or submissions noted hereinabove shall not have any effect on merits of the case and the investigating agency as also the trial Court shall proceed further, in accordance with law, without being influenced with this order.

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

(SUMEET GOEL)
JUDGE

September 23, 2024
Ajay

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No