

**CRM-M-36313 of 2022 (O&M)** **2**

NRI, District S.A.S. Nagar; the petitioner has preferred this petition under Section 438 Cr.P.C. seeking pre-arrest bail.

Learned Senior Counsel for the petitioner has, inter-alia, submitted that the genesis of the FIR in question is the matrimonial discord between the petitioner and complainant-wife; the marriage between the petitioner and complainant-wife took place on 07.04.2012 and two children were born out of the wedlock; it has been further iterated that a valid decree of divorce has been passed between the husband and the wife & the severity of allegations levelled in the FIR is to lend gravity to the FIR; the petitioner was always willing to settle the matter and vide order dated 10.08.2022 this Court had referred the matter to Mediation and Conciliation Centre of this Court but the same could not fructify; there is an interim order operating in favour of the petitioner since 10.08.2022 which has not been misused by the petitioner till date & the petitioner is willing to join investigation and cooperate therein.

At this stage, learned State counsel has vehemently opposed the grant of interim anticipatory bail to the petitioner.

Learned Senior Counsel for the complainant has also opposed the grant of interim anticipatory bail to the petitioner by arguing that allegations made against the petitioner are serious in nature.

Learned Senior Counsel for the complainant has further iterated that the conduct of the petitioner itself reflects that the petitioner ought not to be extended the concession of interim anticipatory bail. Learned Senior Counsel for the complainant has further iterated that the husband has manipulated the documents so as to obtain the divorce fraudulently.

Adjourned to 12.12.2024.

The petitioner is directed to appear before the Investigating Officer on 30.11.2024 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

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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.”

3. Learned State counsel, on instructions from Inspector Tajinder Singh, has stated that pursuant to the order dated 27.11.2024, 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.

4. 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.

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

6. 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

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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.”

7. 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.

8. In view of above, the petition is allowed and interim order dated 27.11.2024 passed by this Court is made absolute, subject to the conditions as enumerated under Section 438(2) Cr.P.C., 1973.

9. 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.



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10. 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.
11. Needless to say that anything observed herein above shall not be construed to be an opinion on the merits of the case.
12. Pending application(s), if any, shall also stand disposed off.

(SUMEET GOEL)
JUDGE

12.12.2024
P.Singh

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