

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.35548 of 2023
Date of Decision: 27.02.2024

Vidhyadhar Baswala ... Petitioner

Versus

State of Haryana ... Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Harinder Singh Aujla, Advocate,
for the petitioner.

Mr. Arjun Lakhanpal, Addl. AG, Haryana,
for the respondent-State.

Mr. Sunil Saharan, Advocate,
for the complainant.

MANISHA BATRA, J.

1. The instant petition has been filed by the petitioner under Section 438 of Cr.P.C. seeking grant of anticipatory bail in case bearing FIR No.40 dated 14.05.2023 registered under Sections 323, 406, 494, 498-A, 506 and 34 of IPC at Police Station Women, Hisar.
2. Brief facts relevant for the purpose of disposal of this petition are that the aforementioned FIR has been registered against the present petitioner on the basis of complaint lodged by his wife Mamta alleging therein that she was married with him as on 05.03.2016. Though a huge amount of money was incurred in the marriage and substantial articles of dowry in different forms including jewellery had been given to the petitioner and his family members, however, they were not satisfied

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with the same and shortly after the beginning of her marital life, they had started harassing her and taunting her on account of bringing insufficient dowry and by raising different demands. She alleged that ultimately she was turned out of her matrimonial house along with her children in the month of March 2020. The petitioner performed second marriage with another lady and even got the said marriage registered on 03.11.2022 at Ghaziabad. While alleging that she had been subjected to cruelty on account of demand of dowry by the petitioner and his family members and that all her istridhan had been criminally misappropriated by them and further that he had performed second marriage during subsistence of his marriage with her, she prayed for taking penal action against the culprits. After lodging of FIR, investigation proceedings have started against the petitioner. The petitioner had moved an application for grant of anticipatory bail before the learned Additional Sessions Judge, Hisar. However, the same had been dismissed vide order dated 10.07.2023.

3. Learned counsel for the petitioner has argued that he has been falsely implicated in this case. Infact the behaviour of the complainant was not proper with the parents of the petitioner as well as himself. In the absence of the petitioner, she used to quarrel with his parents to that extent that the entire family atmosphere had been vitiated. She used to keep on threatening to implicate all the family members in false cases of dowry demand. Biradari Panchayat meetings were held and ultimately it was decided that the petitioner and the complainant would file a petition for divorce by way of mutual consent. Permanent alimony to the extent of Rs.5 lacs was decided to be paid. It is argued that the petitioner had

transferred an amount of Rs.5 lacs through the account of firm of his uncle

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in the name of the complainant and even some land had also been transferred in the name of minor son of the petitioner and the complainant. However, the complainant then backed out from the said settlement and refused to file petition for divorce. The petitioner had then filed a petition for dissolution of marriage under Section 13 of the Hindu Marriage Act in February 2023 and then, she had started blackmailing him by raising demand of a sum of Rs.20 lacs in order to cooperate him for filing a petition for mutual divorce and the present FIR was a counterblast to the said petition as well as on account of refusal by the petitioner to meet with the unreasonable demand of the complainant. It is further argued that the petitioner is ready to join the investigation. His custodial interrogation is not required. Therefore, it is argued that the petitioner deserves to be given extended benefit of anticipatory bail.

4. The respondent-State has filed status report as per which, several notices were sent to the petitioner to join the investigation but he never came up to join the same. It has also been submitted that the fact that he has performed second marriage without getting divorce from the complainant has also been proved on conducting inquiry. While submitting that thorough investigation in the matter is required as the allegations against the petitioner are serious, it is urged by learned State counsel that the petition does not deserve to be allowed.

5. The complainant has also resisted the petition by filing a short reply submitting therein that the pleas as taken by the petitioner are wrong. He has harassed and tortured her. He himself had filed a petition for seeking divorce from herself at Delhi. The land which was shown to be transferred

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by the family of the complainant in the name of her son after making payment of entire sale consideration amount. The petitioner has filed false affidavit on 03.11.2022 to the effect that it is his first marriage, while performing marriage with some other lady named as Rabaica Singh. It is also submitted that two criminal cases bearing **FIR No.131 of 2022** registered under Sections 376, 313, 506 and 420 of IPC at Police Station Maurice Nagar, Delhi and **FIR No.192** dated 04.10.2023 registered under Sections 313, 323 and 506 of IPC at Police Station Maurice Nagar, Delhi are pending against the petitioner and, therefore, he has criminal antecedents. With these broad submissions, it is argued that the petitioner does not deserve to be given concession of anticipatory bail.

6. I have heard learned counsel for the petitioner, learned State counsel and learned counsel for the complainant and have given my thoughtful considerations to the same.

7. The petitioner is alleged to have subjected the complainant to cruelty on account of demand of dowry and is also alleged to have criminally misappropriated her dowry articles. As per the allegations, he along with his family members used to extend beatings to her and criminally intimidated her. The further allegations as levelled against him are that during the subsistence of his marriage with the complainant, he performed marriage with one Rabaica Singh. He is a police official. He is posted as a Head Constable in Delhi Police and is obviously having knowledge of the procedures of law. It is revealed from report submitted by the police that two criminal cases one of which is a heinous crime i.e. a case of rape have been registered against him at Police Station Maurice Nagar, Delhi meaning

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thereby that he is a man of criminal antecedents. He is seeking protection from this Court by way of pre arrest bail. The well settled proposition of law is that while considering an application for grant of anticipatory bail, the Court has to consider the nature of the offence, the role of the person, the likelihood of his influencing the course of investigation or tampering with evidence including intimidating witnesses. The powers under Section 438 of Cr.P.C. are to be exercised in extraordinary and sparing circumstances and not in a routine manner. More so, custodial interrogation of a suspected person is qualitatively more elicitation oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 of Cr.P.C. Many useful information can be disinterred during custodial interrogation. It is also a matter of discretion to grant or not to grant pre-arrest bail. The Court has also to see that an order of anticipatory bail should not operate as inroad in the normal legal procedure of criminal cases by the trial Court. Keeping in view the discussion as made above, I am of the considered opinion that no extraordinary or sparing circumstance entitling the petitioner to seek concession of pre-arrest bail has been made out rather his custodial interrogation is required for thorough investigation in the matter by the police. Accordingly, finding no merit, the petition is dismissed.

(MANISHA BATRA)
JUDGE

27.02.2024
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No