

2024:PHHC:021593

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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CRM-M-36939-2023
Date of decision: 15.02.2024

GAUTAM LUTHRA

...Petitioner

V/s

STATE OF PUNJAB AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr.Lakshay Bector, Advocate,
for the petitioner.

Mr.Anup Singh, AAG, Punjab.

Ms.Lovely, complainant-respondent No.2
(present in person).

SUMEET GOEL, J. (ORAL)

1. This petition has been filed under Section 438 Cr.P.C. for grant of anticipatory bail to the petitioner in FIR No.107 dated 21.07.2022, registered for offences punishable under Sections 406 & 498-A of the Indian Penal Code, 1860, at Police Station Jodhewal, District Police Commissionerate Ludhiana.

2. On 02.02.2024, the following order was passed:-

“Inter alia contends that earlier petition was dismissed by this Court on 17.07.2023 primarily on the ground that the petitioner had not returned the gold ornaments to the complainant. In order

to show his bonafide, learned counsel for the petitioner has relied upon the averments made in paragraph 12 of the petition (supported by the affidavit of the petitioner) that he is willing to furnish a demand draft of Rs.1,50,000/- in lieu of gold articles alleged to be in the possession of the petitioner without prejudice to his rights/contentions. Learned counsel has further argued that the earlier petition was dismissed on 17.07.2023 and the petitioner has filed the instant petition immediately thereafter on 27.07.2023 along with showing his bonafide by offering to deposit a demand draft of Rs.1,50,000/- in the name of respondent No. 2-complainant towards the alleged non-recovery of gold articles.

Adjourned to 15.02.2024.

The petitioner is directed to appear before the Investigating officer on 05.02.2024 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.”

3. Learned State counsel, on instructions from ASI Karamjit Singh, has stated that pursuant to the order dated 02.02.2024, the petitioner has joined investigation and is no longer required for custodial interrogation. However, learned State counsel as also the complainant, who is appearing in person, 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/*Istri-dhan* are in possession of the petitioner and, in fact, the entire dowry articles/*Istri-dhan* 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 principle 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.”

7. Non-recovery of dowry articles/*Istri-dhan* 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 the petitioner on any other count except for effecting recovery of remaining dowry articles/*Istri-dhan*. The aspect, as to what all are the dowry articles/*Istri-dhan* 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 02.02.2024 passed by this Court is made absolute, subject to the conditions as enumerated under Section 438(2) Cr.P.C.

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.

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

February 15, 2024
poonam

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No