

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CRM-M-40062-2023

Date of decision:04.03.2024

Bhupinder Kaur

....Petitioner

V/s

State of Punjab

....Respondent

CORAM: HON’BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Gopal Singh Nahel, Advocate for the petitioner.
Mr. Anuraj Chopra, Additional Advocate General, Punjab.
Mr. Angel Sharma, Advocate for the complainant.

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.2 dated 15.06.2023, registered for offences under Sections 406/498-A/419/420/465/467/468/471/201/120-B of the Indian Penal Code, 1860, at Police Station NRI and District Patiala.

2. On 06.09.2023, the following order was passed:-

“This is a petition under Section 438 of the Code of Criminal Procedure, 1973 for grant of anticipatory bail to the petitioner in FIR No.2 dated 15.06.2023 under Sections 406, 498-A of the Indian Penal Code, 1860 registered at Police Station NRI, District Patiala.

Learned counsel for the petitioner would contend that the son of the petitioner as well as the complainant were residing in Canada and out of the amount alleged to have been transferred to the tune of Rs.1 crore, a property was purchased in the joint name of the petitioner's son and the complainant and qua that the complainant has already filed a petition in the Superior Court of Justice in Canada inter-alia claiming equalisation of the net family property. The learned counsel would contend that the allegation against the present petitioner is of entrustment of certain dowry articles and that an amount of Rs.5 lakhs was transferred into her account. The learned counsel has referred to the bank statement of the petitioner wherein on the same day there is a reverse entry and the amount

had been returned within a period of two hours of the same being deposited in her account. The learned counsel has further stated that the petitioner is willing to settle the matter as also to return any Ishtridhan articles that were entrusted to her.

Notice of motion.

Mr. Adhiraj Singh, AAG Punjab assisting Mr. J.S. Mehndiratta, Addl. AG Punjab accepts notice on behalf of respondent-State of Punjab while Mr. Angel Sharma, Advocate puts in appearance representing the complainant.

The learned counsel for the complainant has contended that huge amounts were transferred with which a joint property has been purchased in Canada. It is further the contention that the complainant is still residing in Canada and that she was thrown out of her matrimonial home in Canada. On a query by this Court as to whether any proceedings were initiated against the husband qua the alleged acts of having thrown the complainant out of her matrimonial home in Canada, the learned counsel for the complainant states that no such proceedings were initiated and only the petition as referred to earlier was filed by her.

Learned counsel for the State has vehemently contended that there are serious allegations of entrustment of about 18 tolas of gold to the mother-in-law i.e. the petitioner herein and the father-in-law and the same having been misappropriated. The learned counsel has further referred to the amount transferred to the tune of Rs.1 crore with which a property in the joint names had been purchased. The learned State counsel has also referred to an amount of Rs.5 lakhs which was transferred to the account of the petitioner.

Learned counsel for the petitioner has submitted that the petitioner is willing to settle the matter and also to return the Istridhan articles which were entrusted to the petitioner. Qua the transfer of the amount to the tune of Rs.1 crore with which a property was purchased in Canada in the joint names of the petitioner's son and the complainant, a petition has been filed before the Superior Court of Justice in Canada claiming equalisation of the net family property amongst other reliefs. Qua transfer of Rs.5 lakhs into the account of the petitioner, the said amount, as per the bank statement appended with the petition, was reverted within two hours on the same very day.

List on 22.11.2023.

Meanwhile, the petitioner is directed to join investigation as and when called for. In the event of arrest, the petitioner shall be admitted to interim bail on furnishing personal bonds with adequate surety to the

satisfaction of the Arresting Officer. The petitioner shall also abide by all the terms and conditions as specified in Section 438(2) of the Code of Criminal Procedure, 1973”

3. Learned State counsel, on instructions from ASI Sohan Singh, has stated that pursuant to the order dated 06.09.2023, 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 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 06.09.2023 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

March 04, 2024
Ajay

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