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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-49034-2023 (O&M)
Date of Decision: 01.03.2024

ANKUSH KUMAR

.. Petitioner

Vs.

STATE OF PUNJAB & ANR

..Respondents

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Ashok Kumar Sama, Advocate for the petitioner.
Mr. Anup Singh, AAG, Punjab.
Mr. Prabhjot Singh, Advocate for respondent No.2
...

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.137 dated 03.08.2023 under Sections 323, 498-A, 506 of the Indian Penal Code, 1860 (Section 406 IPC was added later on) registered at Police Station Sadar Fazilka, District Fazilka.
2. On 05.10.2023, the following order was passed:

“The present petition has been filed under Section 438 of the Code of Criminal Procedure, 1973 for grant of anticipatory bail to the petitioner in FIR No.137 dated 03.08.2023 under Sections 323, 498-A, 506 of the Indian Penal Code, 1860 (Section 406 IPC was added later on) registered at Police Station Sadar Fazilka, District Fazilka.

Learned counsel for the petitioner, at the outset, states that the petitioner is willing to settle the matter especially keeping in view the fact that there is a 1½ year old child. Learned counsel for the petitioner further states that the complainant has not been arrayed as a party in the present petition and prays that she may be impleaded as respondent No.2.

On the oral request of learned counsel for the petitioner, the complainant is impleaded as respondent No.2 in the present petition. Registry to make necessary correction in the Memo of Parties.

Notice of motion.

Mr. Adhiraj Singh Thind, AAG, Punjab, who is present in Court, accepts notice on behalf of the respondent-State while Mr. Prabhjot Singh, Advocate accepts notice on behalf of respondent No.2.

Learned counsel for respondent No.2 states that the complainant is open to exploring the possibility of a compromise.

On the request of learned counsel for the parties, the matter is referred to the Mediation and Conciliation Centre of this Court, where the parties are directed to appear on 18.10.2023 at 10.00 am

Put up on 24.11.2023 along with the report of the Mediator.

The petitioner is directed to bring a demand draft of Rs.30,000/- in the name of respondent No.2, which shall be handed over to respondent No.2 before the Mediator.

Meanwhile, the arrest of the petitioner shall remain stayed.”

3. Thereafter, on 12.12.2023, the following order was passed:

“Mediation has failed.

List on 01.03.2024.

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

4. Learned State counsel, on instructions from ASI Bhadur Singh,

has stated that pursuant to the order dated 12.12.2023, 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.

5. Learned counsel for the petitioner has submitted that no dowry articles/Istridhan as alleged are in possession of the petitioner.

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

7. 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.”

8. 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,

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.

9. In view of above, the petition is allowed and interim order dated 12.12.2023 passed by this Court is made absolute, subject to the conditions as enumerated under Section 438(2) Cr.P.C.

10. 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.

11. 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.

12. Needless to say that anything observed herein above shall not be construed to be an opinion on the merits of the case.

13. Pending application(s), if any, shall also stand disposed off.

01.03.2024

Jasmine Kaur

(SUMEET GOEL)
JUDGE

Whether speaking/reasoned	Yes	No
Whether reportable	Yes	No