

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

102+202

CRM-M-56205-2022 (O&M)

Date of decision: 12.03.2024

KAMALJEET SINGH

....PETITIONER

V/s

STATE OF PUNJAB AND ANOTHER

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Mayur Karkra, Advocate
for the petitioner.

Mr. Adhiraj Singh Thind, AAG, Punjab.

Mr. S.S. Sandhu, Advocate for respondent No.2

SUMEET GOEL, J.

1. This petition has been filed under Section 438 Cr.P.C. for grant of anticipatory bail to the petitioner in FIR No.80 dated 29.09.2022, registered for offences punishable under Sections 406 and 498-A of the Indian Penal Code, 1860, at Police Station Women, District Patiala.

2. On 05.12.2022, the following order was passed:-

"Instant petition has been filed under Section 438 Cr.P.C. praying for grant of anticipatory bail to the petitioner in case FIR No.80, dated 29.09.2022, under Sections 406, 498-A IPC, registered at Police Station Women, District Patiala.

It has been contended by counsel for the petitioner that petitioner solemnized marriage with the complainant on 04.03.2018 and thereafter they are blessed with a son, who is more than three years of age. He submits that dispute between the husband and wife are on account of their temperamental differences and petitioner tried his level best to resolve the same, however, wife alongwith the minor has left the matrimonial home on 19.08.2020. He submits that thereafter the present FIR has been lodged, which is totally based on false and frivolous allegations. He submits that petitioner is ready to settle the dispute amicably. He has submitted that petitioner has already filed a petition under Section 9 of the Hindu Marriage Act, for restitution of conjugal rights, which is pending adjudication. He submits that if the matter is referred to Mediation Centre, there are possibilities of settling the

dispute amicably. He relies upon Arnesh Kumar vs State of Bihar and another, 2014(3) SCC (CrL.) 449 and submits that in view of the aforementioned facts, no case for custodial interrogation is made out, however, he is ready to join the investigation and abide by all the terms and conditions of the anticipatory bail if this Court considers his request for granting the same.

Issue notice of motion for 10.04.2023.

On the asking of the Court, Mr.Karunesh Kaushal, AAG, Punjab, who is present in Court, accepts notice on behalf of the respondent- State.

Respondent No.2 be served for the date fixed.

Petitioner is also directed to pay Rs.25,000/- as litigation expenses to complainant within one month from today.

In the meanwhile, in the event of arrest, the petitioner shall be released on interim bail subject to the satisfaction of the Arresting Officer/Investigating Officer. The petitioner shall join investigation before the Investigating Agency/Officer. He shall abide by the following conditions as envisaged under Section 438(2) Cr.P.C.:-

“(i) That the petitioner shall make himself available for interrogation by a police officer as and when required to do so;

(ii) That the petitioner shall not directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;

(iii) That the petitioner shall not leave India without prior permission of the Court.”

State is directed to file status report on or before the next date of hearing.”

3. Learned State counsel, on instructions from ASI Sewa Singh, has stated that pursuant to the order dated 05.12.2022, 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/*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

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 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 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 05.12.2022 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 12, 2024
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No