

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CRM-M-65541-2023
Date of decision: 27.02.2024

Arun Sharma and another

...Petitioners

V/s

State of Punjab and another

....Respondents

CORAM: HON’BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Prashant Bansal, Advocate for the petitioners.
Mr. Anup Singh AAG Punjab.
Mr. Mahipal Singh Yadav, 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 petitioners in FIR No.71 dated 06.09.2023, registered for offences under Sections 406 & 498-A of the Indian Penal Code, 1860, at Police Station Women, District SAS Nagar.
2. On 01.01.2024, the following order was passed:-

“Apprehending their arrest in FIR No. 71 dated 06.09.2023 registered for offences punishable under Sections 406 & 498-A IPC at Police Station Women, District SAS Nagar; the petitioners have preferred this petition under Section 438 Cr.P.C. seeking pre-arrest bail.

*Inter alia contends that case of the petitioners is squarely covered by the dicta of the Hon’ble Supreme Court in case of **Md. Asfak Alam vs. The State of Jharkhand & Anr., 2023 AIR (Supreme Court) 3610**. The petitioners are willing to join investigation and cooperate therein as also make an earnest endeavor to have the remaining dowry articles recovered.*

Notice of motion.

On asking of the Court, Mr. Kirat Singh Sidhu, DAG Punjab appears and accepts notice on behalf of the respondent-State.

At this stage, Mr. Mahipal S. Yadav, Advocate has put in appearance on behalf of the complainant and has filed his Vakalatnama, which is taken on record.

Adjourned to 08.02.2024.

The petitioners are directed to appear before the Investigating Officer on 05.01.2024 at 11:00 A.M. in concerned Police Station and join investigation. In the event of arrest, the petitioners shall be released on interim bail subject to their furnishing personal/surety bond(s) to the satisfaction of the Arresting Officer/Investigating Officer. As and when further called by Investigating Officer, the petitioners shall join the investigation. They shall abide by the condition(s) enumerated under Section 438(2) of the Cr.P.C.”

3. On 08.02.2024, the following order was passed:-

“Learned State counsel, on instructions from H.C. Harjit Singh, has submitted that the petitioner has joined investigation in terms of order dated 01.01.2024 passed by this Court.

Learned counsel for the petitioners and learned counsel for the complainant/respondent No.2 are ad idem that there are chances of settlement between the parties. Accordingly, the matter is referred to the mediation & Conciliation Centre of this Court.

Parties are directed to appear before the Mediation and Conciliation Centre of this Court on 12.02.2024.

Put up on 27.02.2024 along with the report of the Mediator.

Interim order to continue.”

4. The Mediation proceedings between the parties have not fructified.

5. Learned State counsel, on instructions from H.C. Harjeet Singh, has stated that pursuant to the order dated 01.01.2024, the petitioners have joined investigation and are 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.

6. Learned counsel for the petitioners have submitted that no dowry articles/Istridhan are in possession of the petitioners and, in fact, the entire dowry articles/Istridhan is with the aggrieved-wife.

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

8. 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.”

9. 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 petitioners especially when the State does not require custodial interrogation of petitioners 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 petitioners to deposit any amount towards the alleged non-recovery of complete dowry articles. No such misconduct by the petitioners has been pointed out which may dissuade this Court from confirming the interim anticipatory bail to the petitioners.

10. In view of above, the petition is allowed and interim order dated 01.01.2024 passed by this Court is made absolute, subject to the conditions as enumerated under Section 438(2) Cr.P.C.

11. This order should not be treated as “blanket” order. It will not be interpreted as granting petitioners 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.

12. Liberty is reserved in favour of State/complainant to move for cancellation/recall of this order in case the petitioners violate any condition stipulated under Section 438(2) Cr.P.C., 1973 or upon showing any other sufficient cause.

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

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

(SUMEET GOEL)
JUDGE

February 27, 2024
Ajay

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