

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

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CRM-M-13736-2023 (O&M)
Date of decision: 10.04.2024

Kanchan Palta ...Petitioner

Versus

U.T., Chandigarh and others ...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. B. D. Sharma, Advocate
for the petitioner.

Ms. Vasundhara Dalal Anand, Addl. P. P., U.T., Chandigarh.

Mr. P. S. Ahluwalia, Advocate
for respondent Nos. 2 and 3.

MANISHA BATRA, J. (Oral)

1. CRM-28234-2023

At the very outset, learned counsel for the petitioner submits that he does not wish to press the present application and it may be disposed of accordingly.

Dismissed as not pressed.

2. CRM-M-13736-2023 (O&M)

Through the instant petition, filed under Section 438 of Code of Criminal Procedure, 1973, the petitioner seeks anticipatory bail in case FIR No. 5, dated 27.01.2023, under Sections 406, 498-A of IPC at Women Police Station, Chandigarh.

3. Brief facts of the case relevant for the purpose of disposal of the present petition are that the aforementioned FIR was registered on the basis of

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a written complaint filed by complainant Madhu Gandhi on 27.01.2023, wherein allegations were made by her that her daughter Upma Gandhi was engaged with Ankit Palta, who is son of the present petitioner, in February, 2016. Her daughter was residing in Canada and the son of the petitioner was also residing and working there. The marriage between her daughter and the son of the petitioner was performed on 25.10.2017. She alleged that during this period, they had spent huge amount of money in the form of giving costly gifts and Shagun etc. to the petitioner and her family members and even at the time of engagement ceremony and marriage, several gold ornaments were given and a lavish marriage was performed, the expenditure for which had been incurred by the family of the complainant. She alleged that, however, shortly after the marriage, the husband of her daughter and his family members started harassing her daughter on account of not bringing gifts as per their status in her marriage. The complainant quoted instances of the cruelty meted out by her daughter at the hands of the petitioner and her family members on account of demand of dowry and other trivial matters. She also alleged that while living with the son of the petitioner at Canada also, her daughter had been harassed physically as well as mentally. On 02.07.2020, she had given birth to a female child, who was having some fracture in her arm and was required to undergo through surgery and this fact had infuriated the husband of her daughter as well as his family members including the petitioner to that extent that the husband of the complainant, who had gone to Canada to help his daughter, heard conversation between the petitioner and her son making plans to give divorce to Upma Gandhi and to throw her out of the matrimonial home. While alleging that the petitioner had retained all the

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istridhan belonging to her daughter, she prayed for taking action against her in laws. After registration of FIR, investigation proceedings have been initiated and are going on. The petitioner had moved an application for grant of anticipatory bail before the Court of learned Additional Sessions Judge, Chandigarh but the same had been dismissed, vide order dated 13.03.2023.

4. It is argued by learned counsel for the petitioner that she is a 67 years' old lady, suffering from several age related ailments. Her son and daughter-in-law have been residing in Canada and had shifted there shortly after the marriage. No demand of dowry articles, money or anything else had ever been raised by the petitioner or any family member and only customary gifts were given to them at the time of engagement and marriage. It is argued that since she was residing in India, therefore, there was no occasion for her to raise any demand from the complainant or her own daughter-in-law. She has been involved in this case due to the fact that there is matrimonial discord between her son and the daughter of the complainant. She is ready to join investigation. Her custodial interrogation is not required. No *istridhan* was given to her and neither the details of the *istridhan* have been given nor the offences under Sections 498-A and 406 of IPC have been made out against her. With these broad submissions, it is urged that the present petition deserves to be allowed and the petitioner deserves to be granted benefit of pre-arrest bail.

5. Learned State counsel, assisted by learned counsel for respondent Nos. 2 and 3, on the other hand has argued that there are serious allegations against the petitioner. She along with her family members had subjected the

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daughter of the complainant to cruelty on account of demand of dowry and has also retained her *istridhan* and has converted the same to her own use. Her custodial interrogation is required for proper investigation in the matter by the police as well as for recovery of *istridhan* of the victim. Therefore, it is urged that the present petition is liable to be dismissed.

6. I have heard learned counsel for the parties at considerable length and have also gone through the material placed on record.

7. The petitioner has been booked for commission of offences punishable under Sections 406 and 498-A of IPC by the complainant. Though it is alleged that several costly gifts and ornaments were given to the petitioner at the time of marriage as per her the demand of the petitioner and her family members and the same were retained by her but since it is the allegation in the FIR itself that the abovesaid articles were given as gifts, therefore, in view of well settled proposition of law to the effect that the gifts given at the time of marriage cannot be considered as demand of dowry and do not fall within the *istridhan* of the bride, it cannot be stated at this stage that any case for commission of offence punishable under Section 406 of IPC has been made out. More so, since no details of the said *istridhan* have been given nor it has been clarified as to what particular *istridhan* belonging to the daughter of the complainant had been handed over to the petitioner and had been misappropriated by her, in my considered opinion, the plea cannot be taken into consideration at this stage and it is only on the basis of the evidence to be produced during trial that this fact can be determined. Non-recovery of dowry articles even otherwise is not a ground to deny benefit of bail to an accused.

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8. So far as offence punishable under Section 498-A of IPC is concerned, the allegations with regard to the petitioner subjecting the daughter of the complainant to cruelty on account of demand of dowry appear to be general and vague and do not show that the petitioner conducted any such act or conduct which amounted to subjecting the victim to cruelty, which amounted to willful conduct of such nature as was likely to drive the victim to commit suicide or to cause grave injury or danger to her life, limb or health or such harassment was with a view to coerce her to meet any unlawful demand for any property etc. As such, it is also a debatable issue as to whether a case for commission of offence punishable under Section 498-A of IPC has been made out against the petitioner.

9. In view of the discussion as made above, I am of the considered opinion that it is a fit case for extending benefit of pre-arrest bail to the petitioner. Accordingly, without meaning to make any comment on the merits of the case, the present petition is allowed. The petitioner is directed to appear before the Investigating/Arresting Officer to join investigation within two weeks or as and when subsequently required thereafter. In the event of her arrest, the Investigating/Arresting Officer shall release the petitioner on bail subject to his/her satisfaction. The petitioner shall also abide by the conditions as envisaged under Section 438(2) Cr.P.C.

10.04.2024

(MANISHA BATRA)
JUDGE

Waseem Ansari

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No