

(1998) 09 P&H CK 0029

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Miscellaneous No. 13771-M of 1998

Premwati Sharma

APPELLANT

Vs

State of Haryana

RESPONDENT

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Date of Decision: Sept. 10, 1998

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 438, 439(2)
- Penal Code, 1860 (IPC) - Section 304B, 34, 498A

Citation: (1999) 2 DMC 369 : (1999) 1 RCR(Criminal) 812

Hon'ble Judges: S.C. Malte, J

Bench: Single Bench

Advocate: Shiv Kumar, for the Appellant; Gobind Dhanda, AAG for Respondent No. 1 and Gorakh Nath, for the Respondent

Final Decision: Dismissed

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### Judgement

S.C. Malte, J.

Petitioner Premwati Sharma, seeks cancellation of bail that was granted to the accused-respondents in this case. A case was registered against accused-respondents 2 to 5 for the offence under Sections 304-B/498-A read with Section 34 of the Indian Penal Code. They submitted a petition in this Court for the grant of anticipatory bail. In that petition, order dated 9.2.1998 was passed, and interim anticipatory bail was granted to the petitioners on the condition of each of them furnishing bail bond and surety bond in the sum of Rs. 10,000/- to the satisfaction of Chief Judicial Magistrate, Faridabad. Later, when the matter came up before this Court, it was directed that petitioners should join the investigation. However, the interim order dated 9.2.1998 was ordered to continue. In the set of these facts, the petitioners placed before the Chief Judicial Magistrate, the order dated 9.2.1998 which entitled them to get interim anticipatory bail, and he granted bail. Later, when anticipatory bail matter came before this Court, it came to be disposed of on the statement made by learned Counsel for the accused that the

petition for anticipatory bail was rendered infructuous because bail was granted by the Chief Judicial Magistrate, Faridabad. The petition for anticipatory bail was disposed of on such statement. It may be noted further that meanwhile as per Annexure P-6 it was informed to this Court that the petitioners have joined the investigation and were present in Court. It was, however, indicated that their regular bail should be taken. It is contended that since the petition for anticipatory bail was disposed of as infructuous, the order of interim anticipatory bail also came to an end. No doubt, the petition for anticipatory bail should have been concluded by same order, either granting or rejecting anticipatory bail. It, however, appears that under misconception on the part of Counsel for the accused, he thought that since bail has been granted by the Magistrate, he need not pursue the matter further that appears to be the only technical flaw arising out of misconception on the part of Lawyer. At the same time order passed by the Additional Chief Judicial Magistrate indicates that he had granted bail to the petitioners, albeit, on the basis of the interim anticipatory bail. Some technical flaw in such process, however, would not be sufficient to cancel the bail once thus granted.

2. It was contended that since the offence was triable by the Court of Sessions, the C.J .M., was not empowered to pass bail order. That submissions does not stand in the light of Section 438, Cr.P.C, which empowers the Court to grant bail even in non-bailable offences. It is not necessary that bail application should have been filed in the Sessions Court only because the offence was triable by the Court of Sessions.

3. In the petition there are allegations that respondent/accused threatened and thus misused the liberty. No details are given as to when such threats were given. There is no independent supportive material in that respect. The respondents/accused have denied the allegations. Thus, there is word against word only. Petition dismissed.