

(2013) 08 P&H CK 0836

High Court Of Punjab And Haryana At Chandigarh

Case No: CRM No. M-25542 of 2013

Ajay Kumar Mehra

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: Aug. 7, 2013

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 438
- Penal Code, 1860 (IPC) - Section 120B, 406, 498A

Hon'ble Judges: Mehinder Singh Sullar, J

Bench: Single Bench

Advocate: Darling Bahl, for the Appellant;

Judgement

Mehinder Singh Sullar, J.

The compendium of the facts and material, which needs a necessary mention for the limited purpose of deciding the instant petition for anticipatory bail and emanating from the record, is that the engagement ceremony of complainant Gori Mehra, daughter of late Pawan Kapoor (for brevity "the complainant") was solemnized with petitioner Ajay Kumar Mehra on 26.7.2011 at M.K. Hotel, Amritsar. Besides the other dowry articles, an amount of Rs. 51,000/- was stated to have been given to him at that time. The marriage between them was solemnized on 20.11.2011. Soon after the marriage, the accused have started demanding dowry articles and the father of complainant told them that he was going to Delhi for treatment and on return, he would fulfill their demands. As luck would have been, on 2.1.2012, her father had expired. According to the complainant, after the death of her father, the petitioner-husband and his other co-accused started taunting her on the ground that she had brought sub-standard and insufficient dowry, which were not according to their status and asked her to exchange the dowry articles with new one. One FD of Rs. 2,50,000/- was given to the accused in this regard, but still, they were not satisfied and started demanding cash, gold ornaments and luxury car. The father-in-law of complainant is alleged to have an evil eye on her. All

the accused started maltreating, taunting, abusing and beating her after the birth of her daughter. Ultimately, she was turned out of her matrimonial home.

2. Leveling a variety of allegations and narrating the sequence of events in detail in the FIR, in all, the complainant claimed that the petitioner-husband and his parents (other co-accused) have demanded the dowry articles, luxury car, taunted, harassed, abused, tortured and treated her with cruelty in connection with and on account of demand of dowry. In the background of these allegations and in the wake of complaint of the complainant, the present case was registered against the petitioner and his parents, vide FIR No. 16 dated 17.5.2013 (Annexure P1), on accusation of having committed the offences punishable under Sections 498-A, 406 & 120-B IPC by the police of Police Station Women Cell, City Amritsar, in the manner depicted here-in-above.

3. As is evident from the record that 1st petition (CRM No. M-19157 of 2013) for anticipatory bail filed by the petitioner was dismissed as withdrawn, by virtue of order dated 9.7.2013. Having exercised his right and failed in the court of Addl. Sessions Judge, now he has preferred the instant 2nd petition for the grant of anticipatory bail in this Court in the indicated criminal case, invoking the provisions of section 438 Cr. PC.

4. After hearing the learned counsel for the petitioner, going through the record with his valuable help and after considering the entire matter deeply, to my mind, there is no merit in the present petition in this context.

5. Ex facie, the celebrated arguments of learned counsel that the complainant is at fault, no dowry articles were given at the time of her marriage and since the petitioner has been falsely implicated by her, so, he is entitled to the concession of anticipatory bail, are not only devoid of merit but misplaced as well.

6. As indicated here-in-above, inter-alia direct and very serious allegations are assigned to petitioner, husband of complainant and main accused that he along with his parents has repeatedly tortured, abused and treated her with cruelty on account of insufficiency of dowry articles. Although sufficient pointed dowry articles, cash and one FD of Rs. 21/2 lacs were given to them by the parents of complainant at the time of marriage, but still, they were not satisfied with the same. They demanded a luxury car and cash etc.. On her refusal, she was tortured and treated with cruelty in connection with and on account of demand of dowry articles and cash by the accused. Meaning thereby, since the direct allegations of cruelty are assigned, so, the petitioner is not entitled to the concession of anticipatory bail.

7. Sequelly, the next contention of learned counsel that as there is no reliable material/evidence on record to prove the misappropriation of, and specific demand of dowry articles, therefore, the petitioner is entitled to the concession of anticipatory bail, lacks merit as well. That stage of proving the misappropriation and demand of dowry articles by the petitioner-husband by producing substantive

evidence, has not yet reached. At the time of consideration of the grant of anticipatory bail or otherwise, only allegations and relatable material have to be kept in focus at this initial stage. In this manner, as very serious and direct allegations of torture and cruelty in connection with and on account of demand of dowry articles are assigned to petitioner, who is main accused (husband), therefore, his custodial interrogation is essential in this relevant connection.

8. Therefore, to me, if the petitioner is allowed the benefit of anticipatory bail, then, the recovery of dowry articles, cash, FD and case property is not possible, which would naturally adversely affect & weaken the case of the prosecution.

9. Moreover, it is now well settled principle of law that the order of anticipatory bail cannot be allowed to circumvent normal procedure of arrest, recovery of dowry articles and case property from the main accused and investigation by the police. The Court has also to see that the investigation is in the province of the police and an order of anticipatory bail should not operate as an in-road into the statutory investigational powers of the police, in exercising the judicial discretion in granting the anticipatory bail. Sequently, the Court should not be unmindful of the difficulties likely to be faced by the investigating agency and the public interest likely to be affected thereby. Thus, keeping in view the seriousness of the allegations of commission of offences in question and the fact that the recovery of dowry articles, cash, indicated FD and case property is yet to be effected, to my mind, the petitioner (main accused husband) is not at all entitled to the concession of anticipatory bail in the obtaining circumstances of the case.

10. In the light of aforesaid reasons and without commenting further anything on merits, lest it may prejudice the case of either side during the course of trial of main case, as there is no merit, therefore, the instant 2nd petition filed by the petitioner (main accused-husband) is hereby dismissed as such. Needless to mention that nothing observed, here-in-above, would reflect, on the merits of the main case, in any manner, during the course of trial, as the same has been so recorded for a limited purpose of deciding the present petition for anticipatory bail, in this relevant connection.