

2022 LiveLaw (Del) 5

IN THE HIGH COURT OF DELHI AT NEW DELHI
CORAM: HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD
CRL.M.C. 2050/2021; 3rd JANUARY, 2022
CHARU SONEJA *Versus* STATE (NCT OF DELHI) AND ORS

Petitioner Through Mr. K. K. Manan, Senior Advocate with Ms. Uditi Bali and Ms. Komal Vashist, Advocates;

Respondent Through Ms. Kusum Dhalla, APP for the State with SI Ravinder Kumar, PS Naraina Ms. Kamlesh Mahajan, Advocate for R-2 to R-5

1. This application has been filed under Section 439(2) CrPC read with Section 482 CrPC for cancellation of the anticipatory bail granted to Respondents No.2 to 5 by order dated 06.08.2021 passed by the Patiala House Court in BAIL APPLNs 836/2021 and 837/2021 emanating from FIR No. 73/2021 registered at PS Naraina for the offences under Sections 354, 354A, 354B, 406, 498A, 506, 509, 34 IPC.

2. The complainant gave a complaint against her husband Varun Soneja, respondent No.2 herein, father-in-law Parveen Soneja, respondent No.3 herein, mother-in-law Kiran Soneja, respondent No.4 herein and brother-in-law Karan Soneja, respondent No.5 herein, for offences under Sections 354, 354A, 354B, 406, 498A, 506, 509, 34 IPC.

3. In the complaint, the complainant has alleged that pursuant to her marriage to Varun Soneja, respondent No.2 herein, who is the son of the respondent No.3 and 4, she has constantly been harassed by her in-laws. It is alleged that all the articles given to her by her parents were taken away from her by her mother-in-law. It is also alleged that her father-in-law attempted to rape her and has outraged her modesty. She alleged that her brother-in-law had outraged her modesty. On the said allegations, FIR No.73/2021 for offences under Sections 354, 354A, 354B, 406, 498A, 506, 509, 34 IPC was registered.

4. Apprehending arrest, the respondents herein filed an application under Section 438 CrPC praying for grant of anticipatory bail. The complainant appeared through her lawyer in the proceedings. The order dated 04.06.2021 records that it is admitted by both sides that *stridhan* articles as admitted by the respondents No.2 to 5 have been returned. However, the counsel for the complainant submitted that substantial jewellery of more than Rs.3 crores have not yet been returned. This was recorded in the order dated 04.08.2021. The chargesheet has been filed.

5. On 06.08.2021 also there has been a specific allegation made by the counsel for the complainant therein that a substantial portion of the jewellery articles of more than Rs.3 crores has not been returned. It is also stated that only one locker of the husband of the complainant was searched and that too after the husband of the complainant had already operated the locker and removed the jewellery. It has also been stated that the lockers of the other three accused were not searched for the reasons best known to the investigating agencies. The said order also quotes the relevant portion of the reply of the I.O. wherein different dates have been given regarding the operation of the lockers. The said reply also notes that the complainant was requested a number of times to provide bills of jewellery articles/dowry articles but sufficient bills have not been provided on the ground that the complainant does not have all the bills/documents.

6. Considering all the aspects, the learned Trial Court after observing that the I.O. had accepted the accused persons have joined investigation on many occasions; the fact that certain documents of *stridhan* articles claimed were not supplied by the accused persons despite notice under Section 91 CrPC; no articles of the complainant were found in the lockers of the accused; no ITR of the complaint's father for the relevant period was supplied; *stridhan* articles admitted by the accused have been returned to the complainant; BMW car in question has been returned to the complainant; and on the statement of the I.O. that no custodial interrogation of the accused is required in the matter and that chargesheet has already been filed, granted bail to the accused. The learned Additional Sessions Judge also found that the grievance of the complainant that the matter has not been investigated fairly or that the investigating agencies have acted in connivance with the accused could be addressed by moving the learned Metropolitan Magistrate and it is for the learned Metropolitan Magistrate to order further investigation under Section 173(8) CrPC. This order has been assailed by the complainant.

7. Notice was issued on 30.09.2021. Mr. K K Manan, learned Senior Advocate for the petitioner, submits that after anticipatory bail was granted by the Trial Court on 06.08.2021, the mother-in-law of the complainant operated the locker with the permission of the court. He states that this amounts to tampering with evidence, and, therefore, bail ought not to have been granted. He also states that the allegations in the FIR as substantiated by the statement of the complainant under Section 164 CrPC that the offences alleged against the accused are serious in nature and anticipatory bail ought not to have been granted to the respondents.

8. Mr. K. K. Manan, learned Senior Advocate appearing for the Petitioner, submits that the investigation has not been completed and the Respondents being affluent people are exerting pressure on the police to stall the investigation to be done in a fair and proper manner. He urges that the allegations contained in the FIR and the Section 164 Cr.P.C statement are serious in nature and the investigating authorities have failed to factor into account the fact that the petitioner was given a stupefying substance by her father-in-law with the intention of having forceful intercourse with her.

9. It is contended that a major portion of *stridhan* items have not been returned by the Respondents and only a small portion of the articles, jewelry and other possessions have been given back. He states that during the time of the marriage, expensive gifts and branded merchandise were given by the Petitioner's family to the Respondents, which now they are refusing to return and for the same, the custody of the Respondents is required.

10. Mr. Manan contends that the respondents own two bank lockers at Standard Chartered Bank in Amritsar and have stored the Petitioner's *stridhan* there. They have regularly been evading from getting those lockers checked in the presence of the Petitioner. He states that the petitioner apprehends that the respondents may sell off the articles of the petitioner out of vengeance. He contends that the investigation done by the Police is being carried out in a botched-up manner, being unduly influenced by the Respondents because of their social stature.

11. Countering the submissions of the Petitioner, Mr. Kamlesh Mahajan appearing for respondents No.2-5, submits that they had joined investigation, prior to the stage when anticipatory bail was given by the learned Trial Court and have been unfailingly appearing before the I.O. as and when summoned. He argues that the respondents joined investigation

after receiving the notice dated 26.04.2021 from PS Naraina, New Delhi.

12. He submits that in view of the respondents cooperating with the investigation, there is no requirement for their custody. It is submitted that notices under Section 91 CrPC were sent to Standard Chartered Bank to give details of the Bank Lockers owned by the Respondents asking for the dates on which it had been accessed after registration of criminal proceedings by the Petitioner. It is submitted that the respondent opened the bank lockers in the presence of the S.H.O./I.O. and no *stridhan*/jewelry of the Petitioner was found to be there. It is argued that the FIR filed by the Petitioner is the result of her being disgruntled, as her demands of expanding her jewelry business were not met with by the Respondents.

13. Heard Mr. K. K. Manan, learned Senior Counsel appearing for the Petitioner, Mr. Kamlesh Mahajan, learned counsel appearing for respondents No.2-5, Ms. Kusum Dhalla, learned APP for the State, and perused the material on record.

14. The learned Trial Court has granted anticipatory bail to the accused after considering the statements of the accused to the effect that :-

- a) The accused have joined investigation.
- b) Documents including bills of *stridhan* articles have not been supplied by the complainant.
- c) Income Tax Returns of the father of the complainant for the relevant period has not been supplied.
- d) Some articles of *stridhan* admitted by the side including a BMW car has been returned to the complainant.
- e) The I.O. has stated that there is no custodial interrogation required for the respondents.
- f) Chargesheet has already been filed.
- g) There are no medical documents indicating administering of any stupefying or poisonous substance to the complainant.

15. The petitioner has filed the application for cancellation of anticipatory bail granted to the respondents. The contention of Mr. K. K. Manan, learned Senior Counsel appearing for the petitioner is that the bank lockers have been operated after the grant of anticipatory bail, and therefore, tampering with the evidence i.e. *stridhan* and jewelry etc., would be a ground for cancellation of bail which should ordinarily be moved before the court granting bail.

16. The Status Report notes that the first locker, held in the joint names of Petitioner, Respondent No.2 and 3 was last opened on 12.07.2021 in the presence of the I.O, whereas the second locker held jointly by Respondent 1 and 2 was also opened in the presence of the I.O. The Status Report shows that Respondents have joined investigation on 30.4.2021 and have been cooperative, both before and after being granted protection from arrest by the learned Trial Court.

17. There is a significant difference between an order rejecting an application for bail and an order for cancellation of bail. An order rejecting a plea for bail in non-bailable offences is in the discretionary domain of the Court and such a case can be decided without delving into details, it can be rejected simpliciter on the gravity of the offence and the perception that liberty, if granted, will be abused by the accused. Whereas in the case of cancellation, the Court is called upon to extinguish the liberty that has been formerly granted. A Court must tread with utmost circumspection, and only after an in-depth examination of the situation and

new emergent facts and on finding supervening circumstances and overwhelming evidence that the accused has been abusing the liberty granted to him by the Court, should the Court then exercise its jurisdiction in seizing the liberty of an accused undertrial. Another reason for the Court to be more circumspect in setting aside an order granting bail is that, it involves review of a well- considered, reasoned judicial order granting bail. Personal liberty is one of the cherished constitutional freedoms. Once granted to an accused pending completion of the Trial, it must only be retracted in the face of grave and exacerbating circumstances. The party challenging bail already given needs to demonstrate, by showing evidence and instances, that the person enlarged on bail has been threatening the victim and may consequently cause personal harm to the victim or her family, is tampering with evidence or influencing prosecution witnesses to the extent that it would vitiate the Trial and lead to a miscarriage of justice.

18. The position in law *vis a vis* cancellation of bail, has been expounded and reiterated by the Hon'ble Supreme Court in *Delhi Administration V. Sanjay Gandhi* **AIR 1978 SC 961** and in *Dolat Ram & Ors. V. State of Haryana* **(1995) 1 SCC 349**. The power conferred under Section 439(2) CrPC has to be exercised in a discreet fashion, without dwelling on the merits of whether bail should have been granted or not and only upon viewing the subsequent conduct of an accused. The power is coupled with the reserve and caution, akin to the usage of the High Court's inherent powers given under Section 482 CrPC.

19. An application for cancellation of bail is different from an application for grant of bail. While dealing with an application challenging the order granting bail, the Court has to see whether the order granting bail was vitiated by any serious infirmity or not. Ordinarily, High Court will not exercise its jurisdiction to interfere with an order of bail granted by Special Judge in favour of the accused if there is no serious infirmity in it. The order of the learned ASJ is a well reasoned order which does not require any interference from this Court.

20. As rightly noted by the learned Additional Sessions Judge while granting bail that if the complainant has any grievance regarding the nature of investigation, it is always open for the complainant to move an appropriate application before the learned Metropolitan Magistrate and it is always open for the learned Metropolitan Magistrate to apply its mind and order for further investigation.

21. For the above said reasons, this Court finds no merit in the arguments of the Petitioner. The Petition is accordingly dismissed along with the pending application(s), if any.

22. Be it noted that this Court has not made any observation on the nature/manner of investigation, and if an application challenging the nature/manner of investigation is filed by the complainant, the Trial Court is requested to consider the same on its merits and uninfluenced by the fact that that present petition challenging the grant of bail to the accused has been dismissed.