

IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on : 30.12.2022

+ **BAIL APPLN. 3754/2022**

AKSHAY DHINGRA Applicant

versus

STATE (GOVT. OF NCT OF DELHI) Respondent

Advocates who appeared in this case:

For the Applicant : Mr. V. Aggarwal, Adv.

For the Respondent : Ms. Priyanka Dalal, APP for the State
alongwith Inspector Dinesh Kumar, P.S.
KNK Marg.
Mr. Rajiv Bajaj, Adv. for complainant.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present application under Section 438 of the Code of Criminal Procedure, 1973 is filed by the applicant seeking pre-arrest bail in FIR No. 826/2022 dated 24.09.2022 under Section 380 of the Indian Penal Code, 1860 registered at police station K.N. Katju Marg, Rohini.

2. The FIR was registered on a complaint made by Mrs. Ashka Kholi alleging that the household articles have been stolen while she was away from her house.

3. Learned counsel for the applicant submits that the applicant is married to the complainant and the FIR was registered due to matrimonial discord.

4. He submits that the parties are litigating and the house from where the articles are alleged to be stolen was taken on rent by the applicant.

5. He submits that the complainant, on her own, had left that house. The applicant was left with no other option but to surrender the tenancy of the house and the articles were removed.

6. Learned counsel for the complainant submits that the complainant has gone to her parents' house for three days and when she returned, the house was found to be locked and the household articles were found to be stolen which led to filing of the complaint.

7. He submits that the parties have been litigating and in order to pressurise the complainant, the applicant surreptitiously, in the absence of complainant, surrendered the flat to the landlord. The house was the matrimonial home and the complainant, in this manner, could not have been thrown out of the house.

8. He submits that prior to the present incident, another complaint was given to the SHO, PS - K.N. Katju Marg, Rohini, against the petitioner and his family members, in relation to the theft of the diamond ring and in relation to physical and mental torture.

9. He further submits that the household articles include the television, refrigerator, washing machine, laptop, cash, jewellery, etc. He submits that the said articles were purchased by the complainant on her own and these articles have nothing to do with the litigation pending between the parties, which relates to *istridhan*.

10. Learned counsel has also handed over a brief note along with supporting documents to show that the household articles were bought by the complainant. The same is taken on record.

REASONING

11. It is pertinent to note that the FIR was lodged on the report of theft by the complainant on 25.09.2022. At that stage, she had not given the name of suspect and in the column for 'details of known / suspect / unknown accused', it was mentioned as 'not known'.

12. The Investigating Officer is present in Court. On being asked, informed that the statement of landlord has been recorded who stated that the applicant came to the house and took all the household articles. The statement of witness 'Pawan' has also been recorded who admits to have helped the complainant in removing the articles. He had specifically mentioned that a Godrej Fridge, Washing Machine, Mixer Grinder were removed by the applicant with his help.

13. At this stage, it is apparent that the applicant has surrendered the tenancy and has removed the articles without informing the complainant and without her consent and knowledge. Even though the

applicant is the husband of the complainant, the law does not permit even the husband to take the household articles including the jewellery in this manner. No person can be allowed to take law in his own hands with an excuse that the parties are litigating. Only because a complaint of wife in relation to *istridhan* is pending, does not mean that the husband can be allowed to surreptitiously throw the wife out of the matrimonial house and take away the articles.

14. It is pointed out that the applicant has brought some old clothes / old chappals / sandals, which the complainant had refused to accept. The complainant has specifically provided the bills in relation to the articles which have allegedly been stolen.

15. It is apparent that the investigation is at a nascent stage and the accused has not joined the investigation. The articles are yet to be recovered.

16. It is settled that the power under Section 438 of the CrPC is not to be exercised in a routine manner. The power is to be exercised in case it is felt that accusation has been made with the object of injuring or humiliating the applicant by having him arrested. Similarly, the order of bail in anticipation of arrest, cannot be granted for it to be used as a shield. In the facts of the present case, it cannot be said at this stage that the allegations made are frivolous or have only been made with the object to injure or humiliate the applicant by having him arrested.

17. This Court finds no reason to grant pre-arrest bail to the applicant and the same is, accordingly, dismissed.

18. It is, however, made clear that any observations made in the present order are only for the purpose of deciding the present bail application and should not influence the outcome of the trial.

DECEMBER 30, 2022
'KDK'

AMIT MAHAJAN, J

