

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-60647-2023

Date of decision:12.02.2024

Varun Sharma

...Petitioner

V/s

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Kanhiya Soni, Advocate for the petitioner.

Mr. Hemant Aggarwal, AAG Punjab.

Ms. Harmanpreet Kaur, Advocate and

Mr. Naresh Paul, Advocate

for the complainant-respondentNo.2.

SUMEET GOEL, J.

1. Present petition has been filed under Section 438 of Code of Criminal Procedure, 1973 (for short 'Cr.P.C.')

for grant of anticipatory bail in case FIR No.0092 dated 04.11.2023, under Sections 406 & 498-A IPC registered at Police Station Women, Patiala (Annexure P-1).

2. The FIR was registered on the statement of complainant–Manisha Sharma alleging that her marriage was solemnized with Varun Sharma (petitioner herein) on 25.05.2022. Sufficient dowry was given at the time of marriage and around Rs.25.00 lacs was spent in the marriage including gold ornaments etc. However, the accused were never satisfied and immediately after her marriage, she was maltreated, harassed and taunted by her in-laws including the petitioner (herein) for bringing less dowry. She was also subjected to physical cruelty as well. Thereafter, with the intervention of various respectable persons and panchayat, matter was compromised and complainant was rehabilitated. However, the behavior of

her in-laws and petitioner did not change. The petitioner, who was a habitual drunkard, used to give beatings to the complainant quite often and her in-laws also used to quarrel with her for the reason that she had not brought sufficient dowry. It was further alleged that the petitioner and her in-laws also pressurized her to bring cash from her parents. On refusal, she was given severe beatings and subjected to maltreatment. On 14.08.2022, the petitioner had left the complainant at her parental house on account of *Roka* ceremony of her brother but never took her back. After much persuasion by the brother of the complainant, she was taken back to her matrimonial home on 20.08.2022. Thereafter in October 2022, complainant was again left at her parental house by the petitioner as she had to appear for her IELTS exams but he (husband) never took her back. Thereafter, petitioner raised a demand of Rs.5.00 lacs. As the family of the complainant failed to fulfill the said demand, complainant was never taken back and has been residing at her parental house since October 2022. On these set of allegations, instant FIR was registered and investigation ensued.

3. Vide order dated 02.12.2023, the petitioner was granted the concession of interim anticipatory bail, relevant part whereof reads as under:-

“2. Learned counsel for the petitioner contends that the marriage of the petitioner was solemnized with the complainant/respondent No.2 on 27.05.2022 but no child has been born from the wedlock. The matrimonial dispute has occurred on account of certain health issues being suffered by the petitioner. At the earlier instance, the complainant/respondent No.2 had submitted an affidavit dated 25.01.2023 (Annexure P-8) to the effect that no dowry articles were given at the time of marriage. Besides, the petitioner has instituted a petition under Section 13 of Hindu Marriage Act for dissolution of marriage and the FIR has been lodged as a counterblast to the

proceedings initiated by the petitioner. Furthermore, the petitioner is ready and willing to amicably settle the matrimonial dispute”

Thereafter, no amicable settlement was arrived at between the parties before the Mediation and Conciliation Centre of this Court and hence the case was put up before this Court for adjudication of the anticipatory bail on merits thereof.

4. Learned counsel for the petitioner has argued that petitioner has been falsely implicated in the FIR in question genesis whereof actually is the matrimonial discord between the petitioner-husband and the complainant-wife. It has been further argued that the petitioner has joined investigation in terms of interim order earlier passed by this Court and has cooperated therein. It is further submitted that no recovery of dowry articles/*Istri-dhan* is required to be made from the petitioner. Thus, it is prayed that petitioner be extended the concession of anticipatory bail.

5. Learned counsel appearing for the State has submitted that the petitioner has joined investigation and is not required for custodial interrogation. However, it is submitted that the entire dowry articles/*Istri-dhan* have not yet been recovered.

6. Learned counsel appearing for the complainant-respondent No.2 has opposed the grant of anticipatory bail by arguing that the allegations against the petitioner are serious in nature. It is further, primarily, argued that the entire dowry articles/*Istri-dhan* is yet to be recovered from the petitioner who is intentionally avoiding to have them handed-over to the complainant.

7. The prime issue for determination in the present petition is as to whether the petitioner is entitled to be granted the concession of pre-

arrest/anticipatory bail in the FIR in question in the facts/circumstances of the case. The analogous legal issue that arises for consideration is as to whether a plea for grant of anticipatory bail can be declined on the ground of non-recovery of dowry articles/*Istri-dhan* alleged to be in possession of the accused-petitioner.

Relevant Statutory provisions

8. Section 406 of the Indian Penal Code, 1860 (hereinafter referred to as 'the IPC') reads as under:-

"406. Punishment for criminal breach of trust.-Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

Section 498-A came to be introduced in IPC by way of The Criminal Law (Second Amendment) Act, 1983 i.e. Act 46 of 1983. The statement of Objects and Reasons behind this amendment Act reads as follows:-

"Statement of Objects and Reasons - The increasing number of dowry deaths is a matter of serious concern. The extent of the evil has been commented upon by the Joint Committee of the Houses to examine the working of the Dowry Prohibition Act, 1961. Cases of cruelty by the husband and relatives of the husband which culminate in suicide by, or murder of, the helpless woman concerned, constitute only a small fraction of the cases involving such cruelty. It is, therefore, proposed to amend the Indian Penal Code, the Code of Criminal Procedure and the Indian Evidence Act suitably to deal effectively not only with cases of dowry deaths but also cases of cruelty to married women by their-in-laws."

Section 498-A of the Indian Penal Code, 1860 reads as under:-

"498A. Husband or relative of husband of a woman subjecting her to cruelty.-Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with

imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation. For the purposes of this section, "cruelty" means-

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.]”

Relevant Case Law

9. The precedents germane to the issue(s) in question are as follows:

(i) In a judgment titled as ***Arnesh Kumar vs. State of Bihar and another 2014 (3) R.C.R. (Criminal) 527***, the Hon’ble Supreme Court has held as under:-

"5. There is phenomenal increase in matrimonial disputes in recent years. The Institution of marriage is greatly revered in this country. Section 498-A of the IPC was introduced with avowed object to combat the menace of harassment to a woman at the hands of her husband and his relatives. The fact that Section 498-A is a cognizable and non-bailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives. The simplest way to harass is to get the husband and his relatives arrested under this provision. In a quite number of cases, bed-ridden grand-fathers and grand-mothers of the husbands, their sisters living abroad for decades are arrested. "Crime in India 2012 Statistics" published by National Crime Records Bureau, Ministry of Home Affairs shows arrest of 1,97,762 persons all over India during the year 2012 for offence under Section 498A of the IPC, 9.4% more than the year 2011. Nearly a quarter of those arrested under this provision in 2012 were women i.e. 47,951 which depicts that mothers and sisters of the husbands were liberally included in their arrest net. Its share is 6% out of the total persons arrested under the crimes committed under Indian Penal Code. It accounts for 4.5% of total crimes committed under different sections of penal code, more than any

other crimes excepting theft and hurt. The rate of charge-sheeting in cases under Section 498A, IPC is as high as 93.6%, while the conviction rate is only 15%, which is lowest across all heads. As many as 3,72,706 cases are pending trial of which on current estimate, nearly 3,17,000 are likely to result in acquittal.

6. *Arrest brings humiliation, curtails freedom and cast scars forever. Law makers know it so also the police. There is a battle between the law makers and the police and it seems that police has not learnt its lesson; the lesson implicit and embodied in the Cr.PC. It has not come out of its colonial image despite six decades of independence, it is largely considered as a tool of harassment, oppression and surely not considered a friend of public. The need for caution in exercising the drastic power of arrest has been emphasized time and again by Courts but has not yielded desired result. Power to arrest greatly contributes to its arrogance so also the failure of the Magistracy to check it. Not only this, the power of arrest is one of the lucrative sources of police corruption. The attitude to arrest first and then proceed with the rest is despicable. It has become a handy tool to the police officers who lack sensitivity or act with oblique motive.*

(ii) In a case titled as “**Dilpreet Singh vs. State of Punjab and another, Neutral Citation No.PHHC007557**”, this Court has held as follows:-

“10. As an upshot of above discussion, the following principles of law can be culled out:

(I) *A person, having apprehension of being arrested for offence(s) punishable by a maximum jail term of seven years, can make a plea for grant of pre-arrest/anticipatory bail on ground of apprehension of violation of the cannons of law enunciated by Hon'ble Supreme Court in the cases of MD. Asfak Alam vs. The State of Jharkhand & anr. 2023(3) RCR (Criminal) 754, Arnesh Kumar vs. State of Bihar and another (2014) 8 SCR 128 & Mohammed Zubair vs. State of NCT of Delhi & Ors. 2022 LiveLaw (SC) 629. Such a plea by a person has to be dealt with by a Court in consonance with the ratio decidendi of these Supreme Court judgments.*

(II) *The conduct of an accused is an essential factor required to be considered by a Court while adjudicating upon the plea made by such an accused for grant of pre-arrest/anticipatory bail. An accused cannot seek shelter of provisions of Section 41/41-A of Cr.P.C. de hors his conduct.*

Such conduct has to be ascertained at all stages including the conduct of such accused before filing the plea for anticipatory bail as also during the period the accused is granted interim protection (if it has been so granted) by a Court. The conduct of an accused after decision of such a plea in his favour will, of course, be subject matter of a petition for cancellation of such anticipatory bail, if situation so arises.

(III) For considering conduct of an accused, the Court would be required to look into the following aspects:-

(a) whether the accused is making himself available for interrogation by the investigating officer as and when required by such investigating officer.

(b) whether the accused is, directly or indirectly, making any inducement/threat/promise to any person(s) acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Courts/Investigating Officer.

(c) whether the accused has made any attempt to leave India without any permission from the concerned competent Court.

(d) whether such accused has been involved in commission of any other offence during the pendency of the FIR in question.

The above said factors are only illustrative in nature since no exhaustive list of factors can be laid-down as every case has its own peculiar facts/circumstances.”

(iii) In a judgment titled as ***Bimla Tiwari vs. State of Bihar*** reported as **2023 SCC (Online) SC 51**, the Hon’ble Supreme Court has held as under:

“9. We have indicated on more than one occasion that the process of criminal law, particularly in matters of grant of bail, is not akin to money recovery proceedings but what has been noticed in the present case carried the peculiarities of its own.

10. We would reiterate that the process of criminal law cannot be utilised for arm-twisting and money recovery, particularly while opposing the prayer for bail. The question as to whether pre-arrest bail, or for that matter regular bail, in a given case is to be granted or not is required to be examined and the discretion is required to be exercised by the Court with reference to the material on record and the parameters governing bail considerations. Putting it in other words, in a given case, the concession of pre-arrest bail or regular bail could be declined even if the accused has made payment of the money involved or offers to make any payment; conversely, in a given case, the concession of pre-arrest bail or

regular bail could be granted irrespective of any payment or any offer of payment.”

(iv) In a judgment titled as ***Ramesh Kumar vs. The State of NCT of Delhi 2023 LiveLaw (SC) 496***, the Hon’ble Supreme Court has held as under:-

“26.....However, a reading of the precedents laid down by this Court referred to above makes the position of law clear that the conditions to be imposed must not be onerous or unreasonable or excessive. In the context of grant of bail, all such conditions that would facilitate the appearance of the accused before the investigating officer/court, unhindered completion of investigation/trial and safety of the community assume relevance. However, inclusion of a condition for payment of money by the applicant for bail tends to create an impression that bail could be secured by depositing money alleged to have been cheated. That is really not the purpose and intent of the provisions for grant of bail. We may, however, not be understood to have laid down the law that in no case should willingness to make payment/deposit by the accused be considered before grant of an order for bail. In exceptional cases such as where an allegation of misappropriation of public money by the accused is levelled and the accused while seeking indulgence of the court to have his liberty secured/restored volunteers to account for the whole or any part of the public money allegedly misappropriated by him, it would be open to the concerned court to consider whether in the larger public interest the money misappropriated should be allowed to be deposited before the application for anticipatory bail/bail is taken up for final consideration. After all, no court should be averse to putting public money back in the system if the situation is conducive therefor. We are minded to think that this approach would be in the larger interest of the community. However, such an approach would not be warranted in cases of private disputes where private parties complain of their money being involved in the offence of cheating.”

Analysis (re law)

10. Section 498-A of IPC was brought, by way of an Act of 1983, into the IPC with a salutary principle for curbing the evil of dowry which has been unfortunately prevailing in our Society since long. A bare perusal of

the statement of Objects and Reasons for enactment of 1983 Act endorses this aspect of the matter.

10.1 More recently, the Hon'ble Supreme Court in the celebrated judgment of *Arnesh Kumar's* case (supra) has extensively dealt with the issue of deliberate and rampant misuse of provisions of Section 498-A of IPC as a tool of harassment by a disgruntled wife. The Courts are flooded with cases where it is found that the complainant-wife has misused the provision of Section 498-A of IPC to settle score(s) with her husband and his family members, but at the same time it cannot be ignored that in very many cases such allegations of dowry harassment made by the wife turn out to be true. This Court cannot also lose sight of growing lack of a family level/Social Forum for redressal of grievance(s) of a wife arising out of matrimonial acrimony and therefore criminal proceedings under Section 498-A of IPC are launched at the instance of such wife on her being left with no other alternative redressal forum. Therefore, in many cases, the wife tends to initiate criminal proceedings under Section 498-A of IPC against her husband as also his relatives as a means of a solution seeking redressal mechanism. In other words, in large number of cases, the criminal prosecution under Section 498-A of IPC at the instance of a disgruntled wife are launched for settlement of the matrimonial discord in one way or the other. The Courts, while adjudicating upon a plea for grant of anticipatory bail in a dowry harassment case, are thus required to discharge an onerous task of balancing the issue of personal liberty vis.-a-vis. the grievance(s) of the complainant-wife in the background of the needs of a society governed by law. The principles required to be taken into account by a Court while

dealing with a plea for anticipatory bail has been laid-down by the Hon'ble Supreme Court in the judgment of *Arnesh Kumar's* case (supra) as noted by this Court in the judgment of *Dilpreet Singh's* case (supra).

10.2 While dealing with a plea for grant of anticipatory bail, more than often, the bone of contention is the aspect of recovery of dowry articles/*Istri-dhan*. Judicial notice can well be taken of routine situation(s) in such like cases wherein the prime assertion on behalf of the complainant-wife is that the dowry articles/*Istri-dhan* are not being restored to her by the accused-husband side and they are illegally retaining the same *whereas* it is the categorical stand of the accused that the entire dowry articles/*Istri-dhan* are already in possession of the complainant-wife. The allegations and counter-allegations in this realm, virtually amounting to wrangling in arguments addressed before a Court, occur more or less as a matter of routine which reflects an unfortunate and poignant state of affairs. In other words, the rival contentions advanced on behalf of the parties to the *lis* primarily revolve around the issue of recovery of dowry articles/*Istri-dhan*. Such rival contentions cannot, of course, be evaluated on the touch stone of a weighing scale. Ordinarily, a Court cannot possibly enter into the realm of recovery at the stage of consideration of a plea for anticipatory bail as such stage is a nascent one & it would be more appropriate that such a question of entrustment/recovery etc. be gone into by the trial Court at an appropriate stage.

10.3 The Hon'ble Supreme Court in *Ramesh Kumar's* case (supra) has held that inclusion of a condition for payment of money by the petitioner-accused for bail amounts to giving an unwarranted impression that

the parameters for grant of bail entails depositing the money alleged to have been swindled. The Hon'ble Supreme Court has also observed that, in exceptional cases, the Courts should not be averse for imposing such a condition in a case involving public money but such an approach would not be warranted in cases of disputes where private parties complain of their money being swindled away. In the judgment of Hon'ble Supreme Court in case of ***Bimla Tiwari's*** case (supra), it has been emphasized that *ordinarily* the aspect of payment of money is not a relevant factor for considering a plea for grant of bail.

In the considered opinion of this Court, the proceedings under Section 498-A of IPC are undoubtedly within the ambit of criminal jurisprudence but it is noticeable that the same has distinct contours of a domestic/matrimonial issue as compared to a typical criminal case & in such cases it is *Istri-dhan*, whose recovery from the accused and restoration thereof to the wife, is the prime topical issue. The very nature of *Istri-dhan* itself renders it incomparable with a typical money dispute. Therefore, a case for anticipatory bail under Section 498-A of IPC, is required to be dealt with accordingly by exercising a higher degree of empathy and sensitivity as compared to any other criminal case relating to cheating etc. wherein typically the question of money is involved. In other words, a Court is required to consider the aspect of balancing equities as well while dealing with a plea for grant of anticipatory bail for an offence under Section 498-A IPC despite the fact that such a case falls within the purview of IPC. In this background, the defiant or obstinate conduct of an accused, in not extending cooperation towards recovery of *Istri-dhan*/dowry articles, may even entail

rejection of a plea by such an accused for grant of anticipatory bail, if the facts of such case so warrant.

11 As a sequel to the above said discussion, the following principles of law emerge:-

(I) Non-recovery of dowry articles/*Istri-dhan* cannot ordinarily be a ground, by itself, for declining a plea for grant of anticipatory bail to the husband or his relatives.

(II) The conduct of an accused, is indeed, a relevant factor for consideration of a plea for grant of anticipatory bail on behalf of such accused. Such conduct would also include the cooperation, in accordance with law, extended by such accused for recovery of dowry articles/*Istri-dhan*. Whether or not such cooperation was extended by the accused would be ascertainable from the facts and circumstances of a given case.

(III) In exceptional cases, if the peculiar and/or accentuating facts/circumstances of the case so warrant, a Court would be well within its discretion to pass a direction to the petitioner-accused to deposit in Court or remit to the complainant-wife an appropriate amount towards the *Istri-dhan*/dowry articles. Needless to state herein that it is neither possible nor desirable to enumerate a set of guidelines in this regard & a Court would have to exercise its judicial discretion in this regard in the facts and circumstances of a given case.

Analysis (re facts)

12. The petitioner-husband is accused by the wife of committing offences under Section 406 & 498-A of the IPC. It has been pleaded on behalf of the petitioner-husband that the dispute(s) has resulted primarily on account of certain health issues being suffered by him. The petitioner-husband has instituted a petition under Section 13 of Hindu Marriage Act, 1955 for grant of a decree of divorce and the FIR in question is a counter-

blast thereto. This Court, while granting interim anticipatory bail to the petitioner, had referred the parties to the Mediation and Conciliation Centre of this Court for exploring the possibility of amicable settlement between them. However, the parties could not reach any amicable settlement whereinafter the plea of the petitioner-husband for grant of anticipatory bail was taken up for arguments on merits. The learned counsel for the State of Punjab has submitted, on instructions from the concerned IO, that the petitioner has joined investigation and is not required for custodial interrogation. It is neither the stand of the learned State counsel nor that of learned counsel for the complainant that the petitioner has misused the concession of interim bail by this Court by threatening/intimidating the witnesses or influencing the investigation etc. However, the learned State counsel as also the learned counsel for the complainant have argued, in tandem, that complete recovery of dowry articles/*Istri-dhan* is yet to be effected. Keeping in view the entirety of facts/circumstances of the present case, no cause is made out for not making absolute the interim anticipatory bail granted to the petitioner vide order dated 02.12.2023 passed by this Court Further, no accentuating circumstances are decipherable from the facts of the present case, to direct the petitioner-husband to deposit any amount towards the allegedly non-recovered *Istri-dhan*/dowry articles. This aspect shall be gone into during the course of trial at the appropriate stage. This Court does not deem it appropriate to delve further into this issue, at this stage, lest it may prejudice the case of the parties. Accordingly, the interim order dated 02.12.2023 deserves to be made absolute & the petitioner-

husband deserves to be granted anticipatory bail/pre-arrest bail in the FIR in question.

Decision

13. The interim order dated 02.12.2023 passed by this Court is made absolute and the petitioner is granted anticipatory bail in FIR No.0092 dated 04.11.2023, under Sections 406 & 498-A IPC registered at Police Station Women, Patiala (Annexure P-1) subject to the conditions as enumerated under Section 438(2) of Cr.P.C.

13.1 This order should not be treated as “blanket” order. It will not be read granting petitioner indefinite protection from arrest. It shall be confined to the FIR mentioned *ibid* and will not operate in respect of any other incident that involves commission of an offence.

13.2 Liberty is reserved in favour of State/complainant to move for cancellation/recall of this order in case the petitioner violates any condition stipulated under Section 438(2) Cr.P.C., 1973 or upon showing any other sufficient cause.

13.3 Needless to say that anything observed herein above shall not be construed to be an opinion on the merits of the case.

(SUMEET GOEL)
JUDGE

February 12, 2024

Ajay

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| Whether speaking/reasoned: | Yes/No |
| Whether reportable: | Yes/No |