

Present : Sh. R.S. Brar Advocate, counsel for the accused/
applicants, namely Malkit Singh and Sarabjit Kaur
Sh. Anshuman Syal, Addl. PP for the State
Sh. SPS Kaler Advocate, counsel for the complainant

ORDER

Heard on the application for bail under Section 438 of CrPC filed by the accused/ applicants, namely Malkit Singh @ Malkit Singh Sandhu son of Kehar Singh and Sarabjit Kaur @ Sarabjit Kaur Sandhu w/o Malkit Singh, in the case bearing FIR No. 49 dated 31.07.2023, under Section 498A and 406 of IPC, P.S. Ajitwal, District Moga.

2. Notice of the bail application was served upon the State and record of the police station was requisitioned.

3. The facts as emanate from the FIR are as under:-

that marriage ceremony of the complainant, namely Rupinder Kaur was performed with Gurpreet Singh son of Malkit Singh, resident of Village Ajitwal on 16.06.2019, at Rachna Marriage Palace, Jagraon and Baljinder Kaur was the mediator between the parties to the marriage and out of the wedlock of Rupinder Kaur and Gurpreet Singh, one son, namely Shivjot Singh was born, who was three years of age. At the time of the marriage, father of the complainant had given dowry as per his financial capacity, wherein items, such as Almirah, Sofa Set, Bed, Dressing Table, Cooler, Iron Box, Mixer, Microwave, Utensils and clothes etc were given. At the time of marriage, Gurpreet Singh was given a gold Karra weighing 2½ tola, a gold ring weighing ½ tola and a wrist watch and then, Sarabjit Kaur was given a pair of gold ear rings weighing 1 tola, Malkiat Singh, father-in-law of the complainant, was given a gold ring weighing ½ tola and elder brother in law, namely Harpreet Singh and his wife Rupinder Kaur were also given gold ornaments. Soon after the marriage, husband, namely Gurpreet Singh, mother-in-

law, namely Sarabjit Kaur and father in law, namely Malkit Singh started harassing the complainant, namely Rupinder Kaur for fetching more dowry and they were asking for a car or in the alternative, cash amount of Rs. 5 Lakh. Mother of the complainant, namely Rupinder Kaur had already expired and father of the complainant was an old aged person, suffering from heart related ailment and hence, complainant, namely Rupinder Kaur did not share the information regarding atrocities of her in laws family members with her father. Complainant, namely Rupinder Kaur had already applied for visa to Canada, which was rejected and her husband and in laws family members started insisting for the amount of expenses borne by them to the tune of Rs. 3 lakh and thereby, when the complainant, namely Rupinder Kaur was 7 months pregnant, her husband, namely Gurpreet Singh, her father in law, namely Malkit Singh and her mother in law, namely Sarabjit Kaur sent her to her parental home while insisting that they had a custom of sending the daughter in law of the family to her parents at the time of delivery of the child, despite clearly knowing the fact that her mother had already expired and father was suffering from aged related ailments and there was no body to look after her, rather, they tricked to send the complainant, namely Rupinder Kaur out of her matrimonial home on the false pretext of sending her to her parental home at the time of her delivery. Thereafter, Panchayats were convened but husband, namely Gurpreet Singh started insisting upon divorce from complainant, namely Rupinder Kaur and he flatly refused to accept the complainant, namely Rupinder Kaur in the matrimonial home. Finally, husband, namely Gurpreet Singh instituted a petition for divorce against the complainant, namely Rupinder Kaur. On the other hand, complainant, namely Rupinder Kaur instituted an application for maintenance. Husband, namely Gurpreet Singh was adamant on seeking divorce from complainant, namely Rupinder Kaur and they were not ready to return the gold and

other dowry articles received at the time of marriage to complainant, namely Rupinder Kaur. After an inquiry into the complaint by Rupinder Kaur, the Assistant Superintendent of Police, Nihal Singh Wala concluded that Rupinder Kaur's husband, namely Gurpreet Singh, father in law, namely Malkit Singh and mother in law, namely Sarabjit Kaur in connivance and conspiracy with each other started harassing and maltreating the complainant, namely Rupinder Kaur by making demand for dowry and on her failure to fulfill their unlawful demands, they started beating her and by making false pretext, threw Rupinder Kaur out of her matrimonial home at the time of her delivery and then, criminally misappropriated the gold and dowry articles given to complainant, namely Rupinder Kaur by her parents at the time of her marriage.

4. Arguments were heard.

5. Counsel for the accused/ applicants argued that the accused/ applicants are innocent and they have been falsely implicated in this case and there is nothing on record as regards the maltreatment given to the complainant by the accused/ applicants and there is nothing to be recovered from them. He further submitted that accused/ applicants are ready to join the investigation. Thereby, a prayer for grant of pre-arrest bail was made. Counsel for the accused/ applicants also submitted a statement that the accused/ applicants were not even in possession of any document, whatsoever, belonging to the complainant.

6. On the other hand, Additional PP for the State assisted by counsel for the complainant prayed for dismissal of the application.

7. I have considered the submissions from both the sides and have gone through the material on record.

8. In the matter in hand, neither there are any specific allegations against the accused/ applicants, nor there is any specific date of any incident of cruelty by the accused/ applicants.

9. On prima facie analysis of the nature and gravity of offence, act attributed to the accused/ applicants and other factors peculiar to the case, there would be no justifiability for custodial or pre-trial incarceration of the accused/ applicants at this stage. No circumstances have been explained by the investigating agency, suggestive of the accused/ applicants fleeing from justice or throttling the course of justice. For what purpose, custody of the accused/ applicants is required, has not been explained by the investigating agency.

10. The power to refuse anticipatory bail is not to be exercised as if a punishment before trial is being imposed. Refusal or cancellation of bail should not be used as an indirect process of punishing an accused person before he is convicted. The only material considerations in such a situation are whether the accused/ applicants would be readily available for their trial and whether they are likely to abuse the discretion granted in their favour by tampering the evidence. The same can be taken care of by imposing elaborative and stringent conditions, as has been laid down in Ved Parkash and Others and State of Haryana in CRM- M 53695 of 2022 decided on 21.11.2022 by Hon'ble the High Court of Punjab and Haryana, Chandigarh.

11. As such, the accused/ applicants are directed to join the investigation within 7 days from today or as and when directed by the investigating officer and in the event of their doing so, they are ordered to be released on anticipatory bail to the satisfaction of the Investigating Officer/ Arresting Officer with the conditions as enshrined under Section 438 (2) CrPC and subject to the conditions as follows :-

1. the accused/ applicants shall make themselves available for interrogation by the investigating officer/ competent police officer as and when required;
 2. the accused/ applicants shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court to any police officer;
 3. the accused/ applicants shall not leave India without the previous permission of the Court;
 4. the accused/ applicants shall attend the proceedings in accordance with the conditions of the bonds so executed under Chapter XXXIII of Cr.P.C.
 5. the accused/ applicants shall not commit an offence similar to the offence of which they are accused, or suspected, of the commission of which they are suspected;
 6. the accused/ applicants shall not tamper with the evidence by any means;
- the accused/ applicants shall appear before the trial court on each and every date of hearing unless their personal appearance is exempted.

12. In case of violation of any of the conditions so imposed upon the accused/ applicants, the investigating officer will be at liberty to file an appropriate application seeking cancellation of the bail granted to the accused/ applicants through the present order.

13. Needless to mention that anything discussed herein above shall have no bearing, whatsoever, upon the merits of the case and observations made herein above, if any, are solely for the purpose of disposal of the application in hand.

Pronounced in open court
Dated 14.8.2023

Sanjeev Kumar, Stenographer

(Sanjeev Kundi)
Additional Sessions Judge,
Moga.
(UID No. PB-0246)