

Nirmal Kaur Vs. State

Present : Sh. Baljeet Singh Advocate, counsel for the accused/
applicant
Sh. Gurpreet Singh, APP for the State

ORDER

1. This order of mine shall dispose of an application for bail under Section 438 of CrPC filed by the accused/ applicant, namely Nirmal Kaur wife of Kuldeep Singh, in the case bearing FIR No. 68, dated 20.04.2023, under Section 457 and 380 of IPC, P.S. Dharamkot, District Moga.

2. Notice of the bail application was issued to the State and record of concerned police station was requisitioned.

3. The criminal justice system was set into motion on the statement of Baljinder Kaur, aged 35 years, wife of Dilmanga Ram, daughter of Ajit Singh, resident of Reharwan, recorded on 20.04.2023 by ASI Gurdev Singh. Complainant Baljinder Kaur submitted therein that she was a household woman and she was married to Dilmanga Ram son of Rattan Chand, resident of Busowal, District Kapurthala in the year 2009 and out of their wedlock, two children were born to her, but subsequently, there being a matrimonial dispute between the husband and wife, she started residing at her parental home in Village Reharwan, where she started residing with her younger brother, namely Amarjit Singh son of Ajit Singh. Complainant Baljinder Kaur further submitted therein that her elder brother, namely Kuldeep Singh, who had been residing separately, was an addict of substance abuse and on 05.04.2023, when she got up in the morning, she found that door of Almirah in her room was lying open and upon checking, she found that an amount of Rs. 30,000/- and pair of her gold ear pins were stolen and

she searched for the same at her own level, but she failed. Complainant Baljinder Kaur further submitted therein that she was sure that cash amount to the tune of Rs. 30,000/- and pair of her gold ear pins were stolen by her elder brother, namely Kuldeep Singh son of Ajit Singh and his wife Nirmal Kaur.

4. I have heard the arguments of both the parties.

5. Counsel for the accused/ applicant argued that she has been falsely implicated in this case and in fact, she has got nothing to do with the alleged theft and accused/ applicant is ready to join the investigation. Thereby, a prayer for acceptance of the bail application was made.

6. On the other hand, APP for the State submitted that in order to reach at the depth of the matter, custodial interrogation of accused/ applicant is required. Thereby, he prayed for dismissal of instant application.

7. I have considered the submissions of counsel for the applicant as well as APP for State and have perused the record.

8. As outlined in *Gurbaksh Singh Sibbia v. State of Punjab*, (SC) : Law Finder Doc Id # 104574 reported in 1980 AIR(SC) 1632 *Bhadresh Bipinbhai Sheth v. State of Gujarat and Another* : Law Finder Doc Id # 705395 reported in 2015 AIR(SC) 3090 *Sushila Aggarwal and others - Petitioners Versus State (NCT of Delhi) and another – Respondents* : Law Finder Doc Id # 1674499 reported in 2020 AIR (SC) 831, the guiding parameters are as under:-

(a) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made; (b) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on

conviction by a court in respect of any cognizable offence; (c) The possibility of the applicant to flee from justice; (d) The possibility of the accused's likelihood to repeat similar or other offences; (e) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her; (f) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people; (g) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution, because over implication in the cases is a matter of common knowledge and concern; (h) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to free, fair and full investigation, and there should be prevention of harassment, humiliation and unjustified detention of the accused; (i) The Court should consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant; (j) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the course of events, the accused is entitled to an order of bail.

9. Accusations against the accused/applicant are clear and specific. Investigation is at the initial stage. As such, in order to facilitate proper investigation, for affecting recovery of the stolen cash

amount and gold ear pins and for unfolding the complete story as to how the things were planned and executed, custodial interrogation of the accused/ applicant, named above, is required. In case custodial interrogation is denied to the Investigating Agency that shall leave many loopholes, lacuna and gaps in the investigation, adversely affecting the case of the prosecution, which is uncalled for. If armed with an order for pre-arrest bail, before the accused is interrogated by the police, it would greatly harm the investigation.

10. As such, considering the facts of the case and serious nature of accusations, it is not a fit case for exercising the discretion under Section 438 of CrPC for grant of concession of anticipatory bail.

11. Investigation has been in progress, in such a situation, grant of anticipatory bail will be grossly improper and it will be uncalled for to interfere in the authority of the police to interrogate the accused/ applicant.

12. Thus, the accused/ applicant is not entitled to grant of concession of anticipatory bail and her application is dismissed. Police record be returned forthwith, while papers of the instant bail application be consigned to the Record Room.

Pronounced in open court
Dated 01.09.2023

Sanjeev Kumar, Stenographer

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