(2014) 10 DEL CK 0177

In the Delhi High Court

Case No : Bail Application No. 848 of 2014

Amit Kumar — APPELLANT

Vs

Govt. of NCT of Delhi — RESPONDENT

Date of Decision : 14-10-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 438
Dowry Prohibition Act, 1961 — Section 4
Penal Code, 1860 (IPC) — Section 149, 34, 406, 498A

Citation : (2014) 4 JCC 2850

Hon'ble Judges : Sunita Gupta, J

Bench : Single Bench

Advocate : Geeta Luthra, Sr. Adv., Jomol Jog, Advocate, Ravi Ranjan, Mahesh Kumar, and Party-in-person, Advocate for the Appellant; Sunil Sharma, APP and Insp. Sanjay Sharma ATO/Police, SI. Chetan Singh Meena, Advocate for the Respondent

Judgement

Sunita Gupta, J.—This is an application under section 438 of Code of Criminal Procedure moved by the petitioner for grant of anticipatory bail in case FIR No. 54/2014 under Sections 498A/ 406/ 34 of Indian Penal Code read with section 4 of Dowry Prohibition Act registered at Police Station Mansarovar Park. The FIR in the instant case was registered on the basis of complaint made by Ms. Pallavi Chandra alleging demand of dowry by her husband and in-laws, assault, torture and physical harassment. It was alleged that when the complainant got married with the petitioner - Amit Kumar on 24.11.2012, a sum of Rs. 18 to 20 lac was spent in marriage. A cheque of Rs. 3.50 lac was given in the name of her husband -Amit Kumar besides a sum of Rs. 51,000/- in cash in the engagement ceremony. It was a love-cum-arranged marriage as she knew Amit Kumar since 2009. The petitioner -Amit Kumar was working with her father in AIIMS. Her father was not agreeable for the marriage because of the bad character of Amit Kumar. There are further allegations that a sum of Rs. 4 lac was taken by Amit Kumar for incurring expenses on his marriage from different sources and after marriage, the amount was taken from the complainant for repayment. There are further allegations to the effect that after marriage her mother-in-law demanded entire money of ATM and money earned before marriage which she refused to give. Then Amit Kumar took out her ATM Card from the purse and given the same to his mother. Her entire jewellery articles were taken by the accused and handed over to his mother. Her husband on the asking of his mother used to sleep with his bhabhi. It was further alleged that her mother-in-law and sister-in-law pressed her throat. She was also administered something in the cold drinks as a result of which she was admitted in AIIMS Casualty. Thereafter, she started living with her husband in a separate house. However, things did not improve as such she prayed action against them.

2. It was submitted by Ms. Geeta Luthra, learned senior counsel for the petitioner-Amit Kumar that after marriage, the parties lived together hardly for three months. Pursuant to an information given by mother of the petitioner regarding quarrel, the matter was referred to Delhi Government Mediation and conciliation Centre on the allegations of temperamental differences and with the intervention of Mediation Centre, the matter was settled. The complainant was in dominating position as her father used to be the boss of the petitioner. The complainant herself is working as Sub Inspector in CRPF. The parties started living together in a separate house and it was agreed that both will contribute equally to purchase a house, but after contributing, Rs. 2.50 lac out of Rs. 12.50 lac, the complainant did not pay any amount and therefore the petitioner was compelled to take assistance of his brother who contributed for purchase of the house. As such, a sale deed was executed in the joint name of the petitioner and his brother. Feeling aggrieved, the complainant filed a civil suit for cancellation of sale deed and permanent injunction which is pending in Karkardooma Courts, Delhi. Although the house was purchased by the petitioner with the assistance of his brother, however, the house is in possession of the complainant and the petitioner is out of the house and ran away fearing for his life. It was further submitted that the allegation of the complainant that she was administered some poisonous substance in cold drink and, therefore, she had to be admitted in AIIMS Casualty was negated by the report of the doctor who opined that the there was no smell of poison and the complainant was referred to a psychiatrist and as such it was a false allegation. Her allegation that a sum of Rs. 3.50 lac was given by way of a cheque at the time of engagement ceremony again is falsified by her own complaint wherein it is alleged that the cheque was returned to her by the family members of the petitioner. It was further urged by learned senior counsel for the petitioner that prior to filing of the present complaint, the petitioner had informed the SHO Police Station Farsh Bazar regarding misuse of his driving license, voter identity card, gmail account and other important documents by the complainant. The complainant hacked the gmail account of the petitioner and started generating email on his behalf. No action, however, was taken by the police pursuant to the complaint made by the petitioner to SHO Police Station Farsh Bazar in this regard. When the petitioner moved the

anticipatory bail application before the learned Additional Sessions Judge, the complainant produced certain emails purportedly sent by the petitioner to the complainant. In these emails produced by the complainant, certain unsavoury remarks were made against the Presiding Officer of the Trial court and as such the application was dismissed. Even the second anticipatory bail application was dismissed and while rejecting the bail application, the learned Additional Sessions Judge heavily relied upon the emails produced by the complainant. However, now an FIR has been registered against the complainant under IT Act and various provisions of Indian Penal Code. It is submitted that the petitioner has joined investigation and even wrote a number of letters to the Investigating Officer of the case that he is ready and willing to join investigation. In the status report submitted by the State, it is alleged that custodial interrogation of the petitioner is required for recovery of Istridhan articles of the complainant. It was further submitted that the complainant is in possession of the house and in fact all the articles of the complainant are lying with her. Even otherwise, in the complaint itself, averment has been made that the articles are lying with the mother-in-law. The family members of the petitioner have already been released on bail. Moreover, reliance was placed on Jagdish Thakkar v. State of Delhi, 1992 (3) CCR 2764 for submitting that these are not proceedings for recovery of articles. Lastly, it was urged that the petitioner has roots in the society. He is a government servant working in AIIMS as such there is no chance of his fleeing away from justice. He was granted interim protection and has never misused the concession of the same. Under the circumstances, it was submitted that the petitioner is entitled to be granted anticipatory bail.

3. The application is opposed by learned Additional Public Prosecutor for the State duly supported by learned counsel for the complainant. The bail application is primarily opposed by learned Additional Public Prosecutor for the State on three grounds - (i) The gravity of the allegations made in the complaint (ii) the conduct of the petitioner and (iii) recovery of Istridhan articles. The learned Additional Public Prosecutor for the State referred to the various allegations made in the FIR for submitting that the allegations are so grave that the petitioner is not entitled to be released on bail. He also referred to the conduct of the petitioner for submitting that the emails sent by the petitioner shows that he does not have any respect for the Courts. Moreover, the Istridhan articles of the complainant are yet to be recovered and as such custodial interrogation is required. It was further submitted that although pursuant to the complaint made by the petitioner regarding hacking of his gmail account by the complainant, an FIR has been registered against her under IT Act and other provisions of law, but under instruction of the investigating Officer of that case, it was submitted that so far nothing has surfaced against the complainant. Under the circumstances, it was submitted that the petitioner is not entitled to grant of anticipatory bail.

4. Learned counsel for the applicant relied upon Siddharam Satlingappa Mhetre Vs. State of Maharashtra and Others, ; Smt. Surjit Kaur Chopra Vs. State and Another, ; Rajesh Chander Bhardwaj Vs. State, ; Ms. Anu Gill Vs. State and

Another, , Smt. Neera Singh Vs. The State (Govt. of NCT of Delhi) and Others, ; Shakson Belthissor Vs. State of Kerala and Another, ; State of Rajasthan, Jaipur Vs. Balchand alias Baliay, ; Onkar Nath Mishra and Others Vs. State (NCT of Delhi) and Another, ; Preeti Gupta and Another Vs. State of Jharkhand and Another, .

5. In Siddharam Satlingappa Mhetre (supra), it was observed by the Hon''ble Supreme Court as under:--

"Discretion vested in the court in all matters should be exercised with care and circumstances depending upon the facts and circumstances justifying its exercise. Similarly, the discretion vested with the court under Section 438 Cr.P.C. should also be exercised with caution and prudence. It is unnecessary to travel beyond it and subject the wide power and discretion conferred by the legislature to a rigorous code of the self-imposed limitations.

No inflexible guidelines or strait-jacket formula can be provided for grant or refusal of anticipatory bail, We are clearly of the view that no attempt should be made to provide rigid and inflexible guidelines in this respect because all circumstances and situations of future cannot be clearly visualized for the grant or refusal of anticipatory bail. In consonance with the legislative intention the grant or refusal of anticipatory bail should necessarily depend on facts and circumstances of each case. As aptly observed in the Constitution Bench decision in Sibbia''s case (supra) that the High Court or the Court of Sessions to exercise their jurisdiction under Section 438 Code of Criminal Procedure by a wise and careful use of their discretion which by their long training and experience they are ideally suited to do. In any event, this is the legislative mandate which we are bound to respect and honour.

122. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:

i. The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;

ii. 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;

iii. The possibility of the applicant to flee from justice;

iv. The possibility of the accused''s likelihood to repeat similar or the other offences.

v. Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.

vi. Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.

vii. 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 accused is implicated with the help of Sections 34 and 149 of the Indian Penal Code, the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;

viii. 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 the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;

ix. The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

x. 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 normal course of events, the accused is entitled to an order of bail.

123. The arrest should be the last option and it should be restricted to those exceptional cases where arresting the accused is imperative in the facts and circumstances of that case."

Reliance was also placed on the latest pronouncement of Hon''ble Supreme court in Arnesh Kumar v state of Bihar (Criminal Appeal No. 1277/2014) which was also the application for grant of anticipatory bail moved by the petitioner apprehending his arrest in a case under section 498A IPC and section 4 of Dowry Prohibition Act, 1961. Various guidelines were given by Hon''ble Supreme Court in order to ensure that police officers do not arrest accused unnecessarily and detention of the accused is not authorised by the Magistrate casually and mechanically. It is not in dispute that the applicant is a government employee and working in All India Institute of Medical Sciences. As such, there are no chances of his absconding. He has joined investigation. Keeping in view the facts and circumstances, it is ordered that in the event of his arrest:--

"(i) Petitioner be admitted to bail on his executing personal bond in the sum of Rs. 20,000/- (Rupees Twenty Thousand only) with one surety in the like amount to the satisfaction of the concerned I.O./SHO.

(ii) He shall join the investigation as and when called for by the I.O.

(iii) He shall furnish his address as well as his contact number to the Investigating Officer.

(iv) He shall not threaten or coerce complainant or any prosecution witness."

The application is accordingly disposed of. Copy of this order be given dasti under the signature of Court Master to counsel for the petitioner.

