

(2001) 04 P&H CK 0083

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 43211-M of 2000 (O and M)

Ashok Kumar

APPELLANT

Vs

State of Haryana through the Secretary to Government

RESPONDENT

Date of Decision : 23-04-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 438

Citation : (2001) 2 DMC 476 : (2001) 3 RCR(Criminal) 206

Hon'ble Judges : Amar Dutt, J

Bench : Single Bench

Advocate : Mr. Gorakh Nath, Mr. S.P. Gupta and Mr. S.D. Bansal, for the Appellant; Mr. Rajesh Bhardwaj, Asstt. Advocate General, Haryana, for the Respondent

Judgement

Amar Dutt, J.—The marriage between Neeraj son of petitioner No. 1 and Paraul which took place on 21.7.2000 with great pomp and show lasted only 3 months after the differences that arose, between the couple forced them to separate. The circumstances leading to the separation ultimately culminated in the FIR being lodged on a written complaint which purports to have been forwarded under the signatures of Shri Promod Kumar Gupta and Parul. The complaint which incorporates the details of the harassment suffered by the wife at the hands of the family of Neeraj and attributes specific roles to various members of the family of her in-laws, is accompanied by a list of the articles that are alleged to have been handed over on behalf of her parents to various members of the family of her in-laws which according to the complaint were still in the custody of the family of Neeraj and were not being returned to the relations of the wife despite requests being made for the same.

2. The petitioners seek anticipatory bail in the ground that the wife is not coming forward as the primary complaint and the family of Neeraj including the petitioners have already returned whatever articles of dowry were given to the boy at the time of the marriage. It is also submitted that in these circumstances

the custody of the petitioner would not be required and the complaint incorporated in the FIR is being primarily pursued in order to harass and humiliate the petitioners so as to improve the bargaining position of the girl's side whenever any petition on the matrimonial side is moved before a competent Court.

3. On behalf of the State and more so on behalf of the complainant anticipatory bail is being opposed on the ground that the girl was beaten within weeks of the marriage which act was repeated on the slightest pretext. Apart from this, according to the complainant it was submitted that though talks for return of dowry have been taking place yet nothing concrete materialised between the parties in this direction. It is also submitted that in the FIR certain allegations have been made regarding some naked photographs of the girl having been taken by the husband as also an attempt had been made to poison her. Apart from the fact that it may be necessary to recover the tablet with which the complainant was sought to be poisoned, it would also be necessary that not only photographs but also the negatives thereof are secured by the Investigating Agency so as to avoid their being mis-used by the petitioner and his family at any later stage. Asserting all this the counsel for the respondents have opposed the extension of concession of anticipatory bail to the petitioners as the grant of the same was likely to prejudice the case of the respondents irreparably.

4. I have given my thoughtful consideration to the rival contentions of the learned counsel for the parties.

5. In India matrimonial discord like anywhere else results in trading of allegations and counter allegations about the veracity of which any definite opinion can be given only after the parties have produced legal evidence in support of their assertions. Invariably both the parties advisedly try to doctor their versions in a way which improves their bargaining power whether or not the marriage breaks down irretrievably or not. In majority of the cases their primary grievance is confined to the assertions that articles of dowry brought by the bride have been misappropriated by the members of the family who are not prepared to return the same. Apart from this there are allegations of harassment at the hands of the close family circle by which attempts the complainant seeks to achieve the object indicated hereinbefore. In the present case, however, apart from the allegations about beating, harassment, demands of dowry and refusal to return the dowry articles inspite of offers being made outside as well as in the Court for the purposes, there are serious allegations about the husband having taken nude photographs of the wife which may expose her to blackmail, embarrassment and character assassination.

6. As already indicated by me even during the course of arguments it appeared that the parties were prepared to sort out their differences provided a lumpsum amount was handed over to the complainant so as to facilitate the rehabilitation of the girl. On going through the FIR I find that though there is a reference of some photographs having been taken there is nothing to indicate that these were

taken when the wife was not wearing anything. If assertions made during the course of arguments are correct then these photographs should be in the custody of the husband and not with the father, mother or the sister of the husband. The application of the husband for the anticipatory bail has already been rejected by me when it was not pressed and Neeraj had undertaken to surrender before the trial Court.

7. In these circumstances without commenting any further on the merits of the case, I feel that the interim bail granted to the petitioner should be made absolute. Tn this view of the matter, the order dated 24.11.2000 is made absolute.

8. It is, however, made clear that the benefit of this order will enure to the petitioners till the filing of the challan whereupon they would furnish fresh bail bonds to the satisfaction of the trial Court subject to the following conditions :-

i) that they shall make themselves available for interrogation by the investigation officer as and when required.

ii) that they 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 or to any police officer;

iii) that they shall not leave India without the previous permission of the Court concerned.

In case, the petitioners, at any stage, absent from the Court proceedings without the prior permission of the Court, it shall be open to the trial Court to cancel the bail and secure the presence of the petitioners through non- bailable warrants.

9. Order accordingly.