
(2007) 12 DEL CK 0199

In the Delhi High Court

Case No : Bail Application No. 907 of 2007

Banshi Lal and Another

APPELLANT

Vs

NCT of Delhi and Another

RESPONDENT

Date of Decision : 07-12-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 438
Penal Code, 1860 (IPC) — Section 34, 406, 498A

Citation : (2008) 1 DMC 262

Hon'ble Judges : Vidya Bhushan Gupta, J

Bench : Single Bench

**Advocate : Sandeep Sethi, G.L. Soni and Manish K. Bishnoi, for the Appellant;
Navin Sharma and Sumita Kapil, for the Respondent**

Final Decision : Disposed Off

Judgement

V.B. Gupta, J.—Present petition has been filed u/s 438, Cr.P.C. on behalf of petitioners seeking anticipatory bail in this case.

2. Petitioners are the father-in-law and mother-in-law of the complainant. The present case has been registered under Sections 498A/ 406/34, IPC against them and other persons.

3. On 28th March, 2007, learned Additional Sessions Judge granted interim bail to the petitioners subject to certain conditions. The operative part of this order reads as under:

Sh. Sharma submits that applicants are prepared to return the entire dowry articles as per the admitted list and are also in principle agreed to return the value of jewellery items; though the value is yet to be negotiated and settled. He prays for short adjournment to return the Stridhan as well as to bring a demand draft for the amount of Rs. five lacs to show his bona fide towards settlement.

In terms of the above said statement of Sh. Sharma, applicants are admitted to interim anticipatory bail. I direct that in the event of arrest applicants be

admitted to interim anticipatory bail upon their executing a personal bond in the sum of Rs. 10,000/- each with one surety of the like amount each to the satisfaction of the concerned IO/SHO. However, applicants are directed to join the investigation as and when required by IO.

Let the dowry articles be returned before the IO on 31.3.2007 at 11.00 a.m. at Police Station.

To come up before this Court on 13.4.2007.

4. On 13th April, 2007, since the petitioners did not return dowry articles or paid Rs. 5 lacs as offered to the complainant, the learned ASJ dismissed the application for anticipatory bail filed on behalf of petitioners. The relevant portion of this order reads as under:

On 28.3.2007 Counsel for applicants had made a statement that he will bring a demand draft of Rs. 5 lacs to show their bona fides towards the settlement. Nothing has been done. It was also submitted by Counsel that applicants are prepared to return the entire dowry articles as per the admitted list and also agreeing to return the value of jewellery items.

Mr. Issar submits that neither the dowry articles have been returned nor any amount of Rs. 5 lacs has been offered to the complainant.

In the facts and circumstances, I am of the opinion that applicants are misusing the concession granted to them by this Court. The application for anticipatory bail is dismissed.

5. It has been contended by Learned Counsel for the petitioner that Apex Court has held in its various decisions that no monetary condition can be imposed by the Courts while granting anticipatory bail since the criminal proceedings can not be used as a threat to recover money from the accused and even in those cases where the accused himself undertook to make the payment but later on could not pay due to lack of money or other genuine reasons, anticipatory bail cannot be refused.

6. On the other hand, it has been argued by Learned Counsel for the complainant that petitioners obtained interim bail on the basis of misrepresentation by undertaking to return the dowry articles as well as jewellery items and further to show their bona fide towards settlement, they offered to pay a sum of Rs. 5 lacs but later on the petitioners, neither returned the dowry articles nor paid the amount of Rs. 5 lacs, offered to the complainant and it was on the offer given by the petitioners, the Court has granted interim bail to the petitioners. On behalf of the State, it has been argued that as per disclosure statement of the husband of the complainant, the jewellery articles are with the petitioners and under these circumstances custodial interrogation of petitioners is required.

7. In the various decisions cited by Learned Counsel for the petitioners, it has been laid down that the Court cannot pass order for conditional deposit of the

amount for the purpose of granting anticipatory bail and on this point, a decision of Apex Court reported as Avinash Arora and Others Vs. State of U.T. Chandigarh and Another, , may be referred to in which it has been laid down that:

Having heard the Learned Counsel for the parties, we have no hesitation to come to the conclusion that the Court committed error in passing the conditional order of depositing Rs. 10 crores for grant of anticipatory bail as in our view, this cannot be held to be an exercise of judicial discretion. In that view of the matter, we set aside the impugned direction and remit the matter to the High Court for re-disposal of the petition filed u/s 438, Cr.P.C, in accordance with law.

8. So, keeping in view the guidelines laid down by the Apex Court, the impugned order passed by the trial Court is set aside and the matter is remitted back to the trial Court for re-disposal of the application filed by the petitioners u/s 438, Cr.P.C, in accordance with law.

9. Since, the present petitioners are under interim protection from this Court, they shall remain as such till the next date of hearing before the trial Court, which is fixed as 17th December, 2007.

10. Parties are directed to appear before the trial Court on 17th December, 2007. With these observations, the present application stands disposed of.