

(2016) 03 RAJ CK 0032

In the Rajasthan High Court

Case No : Criminal Misc. Bail Application No. 10747/2015

Praveen Kumar Sonkar and Others

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 08-03-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, Section 438
Penal Code, 1860 (IPC) — Section 406, Section 498-A

Citation : (2016) 03 RAJ CK 0032

Hon'ble Judges : Sandeep Mehta, J.

Bench : Single Bench

Advocate : Biri Singh Sinsinwar, Sr. Advocate, G.S. Bhati and Javed Hussain, for the Appellant; Ashok Upadhyay, Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Sandeep Mehta, J.—1. The petitioners, who apprehend their arrest in connection with FIR No. 111/2015, registered at Women Police Station Udaipur City, District Udaipur for the offences under Sections 498-A and 406 IPC, have approached this Court seeking anticipatory bail by way of this application under Section 438 Cr.P.C.

2. Facts in brief are that the petitioner Praveen Kumar was married to the complainant Smt. Bhumika on 14.02.2013. The petitioner No. 2 Naveen Sonkar is the elder brother of Praveen Kumar. Both the petitioners herein are serving in the Armed Forces. It appears that the matrimonial relations between Praveen and Smt. Bhumika run into heavy weather and complaints were filed by Smt. Bhumika with the Women Commission, Government of India as well as with the petitioners' Commanding Officer. Mediation proceedings were attempted but, failed. Smt. Bhumika filed a typed complaint with the SHO, Women Police Station, Udaipur on 13.07.2015 alleging that even before the marriage, the accused persons demanded huge sums of money as dowry and threatened that if the demand was not met, they will not go through with the marriage. Accordingly

and under pressure of the accused, the complainant's father handed over two cheques dated 19.02.2013 for a sum of Rs. 2,51,000/- and Rs. 1,00,000/- respectively to the petitioner Praveen Kumar only whereafter, the marriage was solemnised. The complainant, went to the matrimonial home after the marriage where she was already ill-treated in the matrimonial home. All the expenses of the Honeymoon were borne by her father. The complainant's husband, who was serving in the Army, was posted at far of stations. He left the complainant at Bhopal with his parents. She was maltreated by the matrimonial relations. Accused No. 4 Shri Naveen used to cast an evil eye on the complainant. On a particular night, she forgot to lock her bedroom on which, Naveen Sonkar came into her bedroom and tried to molest her. She shouted on which, he went away. When she informed her husband, father-in-law and mother-in-law of this incident, rather than giving solace to her, they started hurling insinuations on her character. The complainant thereupon, started feeling that she should end her life. She was taunted that her father had not given sufficient dowry, therefore, she would not be allowed to go to her father's house and shall have to live in the matrimonial home and do all the day to day chores. She was beaten. Her ornaments were retained by her mother-in-law and sister-in-law. The complainant informed her parents about this maltreatment. They talked to her husband. He took her to the post where he was stationed. She stayed with her husband for a few days but, there also, her husband used to assault her. She was continuously taunted that he was a Major in the Army and many better relations offering more dowry were available for him. She alleged that her father-in-law, brother-in-law, mother-in-law and sister-in-law twice tried to poison her. However, the complainant was not desirous of ending her matrimonial relationship and thus, she tolerated everything. On 06.06.2015, her husband dropped her off at her father's house at Udaipur saying that she was not required in the matrimonial home. Her father tried to talk to her husband on which, he agreed to go through a counselling. The counselling was held at Udaipur where, all the accused were present. There, the complainant's father was abused. The accused demanded a sum of Rs. 5,00,000/- from him. Naveen Sonkar slapped the complainant in presence of everybody. Thereafter, the accused went away. On 23.06.2015, the Commanding Officer of the accused called the complainant and her father to Meesamari (Assam) for conciliation which failed. On the basis of this report, an FIR No. 111/2015 was registered at the Women Police Station, Udaipur and investigation commenced.

3. Conciliation was attempted during investigation but it also proved unsuccessful. Conciliation was also attempted at the Women Commission where, the complainant had lodged a complaint but the same proved unsuccessful. In the proceedings going on before the petitioners' Commanding Officer, a significant portion of the petitioner No. 1 Praveen Kumar's salary has been ordered to be paid to the complainant by way of monthly maintenance.

4. Apprehending arrest in connection with the above FIR, the petitioners filed an application for anticipatory bail before the Additional Sessions Judge, No. 4,

Udaipur which was rejected by order dated 06.11.2015. Now they have approached this Court by way of this application for anticipatory bail.

5. The matter was taken up by this Court on 03.02.2016 on which date, the counsel representing the petitioners informed that a sum of Rs. 4,50,000/- had already been paid to the complainant against her Streedhan and on the demand made by the counsel for the complainant, they agreed to pay an additional amount of Rs. 4,00,000/- to her. Upon this, the matter was postponed noting that the demand draft of Rs. 4,00,000/- would be kept ready on the next date of hearing. The matter was then taken up on 15.02.2016 and the petitioners were directed to remain present in the Court on the next date. On 25.02.2016, the petitioners as well as the complainant appeared in the Court. The petitioners' counsel, offered to handover a demand draft of Rs. 4,00,000/- to the complainant. However, the counsel for the complainant insisted that she was not desirous of ending the matrimonial relationship and was eager to go and live with her husband. The parties were thus sent to the Mediation Center, Rajasthan High Court, Jodhpur for attempting conciliation which also failed.

6. Shri Biri Singh Sinsinwar, learned Senior Counsel representing the petitioners vehemently contended that parties came into contact with each other through a matrimonial website. Thus, as per him, there is no question of any dowry being demanded from the complainant or her father. He urged that two cheques about which much controversy has been raised, were voluntarily given by the complainant's father so that she could purchase the day to day household articles at the place of her husband's posting. The amount has already been returned to the complainant and in addition thereto, the petitioners are ready to handover the demand draft of Rs. 4,00,000/- to the complainant towards her remaining Streedhan articles, if any. He contends that the petitioner Praveen Kumar, met with a serious injury while discharging his duties in the Army. He was hospitalised and had to undergo a surgery. The complainant did not have the courtesy to go for taking care her husband despite receiving this information. Upon this, the petitioner Praveen Kumar moved an application for divorce in the Court at Bhopal. As per him, the allegation of alleged molestation against the petitioner Navin is patently false. He urged that the petitioners have already appeared for investigation. Thus, he contended that the petitioners deserve to be granted anticipatory bail.

7. Per contra, learned Public Prosecutor and the learned counsel representing the complainant vehemently opposed the submissions advanced by the petitioners' counsel.

8. Shri Upadhyay, learned Public Prosecutor urged that it is clearly a case wherein, the accused, right from the beginning, were having a greed of dowry. The complainant was continuously maltreated. However, she was not desirous of terminating the matrimonial relations. Thus before lodging the FIR, she took recourse to the milder remedies of approaching the Women Commission and the Army officials so that the marriage could somehow be saved. The accused, who

were apprehending legal action, preplanned their defence and documents were created with this objective. He therefore submits that the petitioners should not be granted anticipatory bail.

9. Shri Javed Hussain, learned counsel representing the complainant vehemently contended that the complainant's husband Praveen Kumar has tried to misuse the process of law. He points out that on the one hand, he was continuously chatting with the complainant and on the other hand, he clandestinely filed a divorce application in the Court at Bhopal and tried to get the matter decided ex-parte. He submits that wild and unfounded allegations have been levelled in the divorce application. As per him, the complainant is even, as on date, ready to live with her husband and to continue her matrimonial life. He thus urges that the petitioners should not be granted anticipatory bail.

10. I have heard the arguments advanced by the learned counsel for the parties and have gone through the case diary.

11. It is undisputed that the parties came into contact with each other through a matrimonial website. The complainant has levelled numerous allegations in the FIR. However, in her statement under Section 161 Cr.P.C. recorded by the I.O., many of these allegations are missing. While in the FIR, the complainant alleged that she thought of committing suicide but in the statement, she alleged that her husband gave her naphthalene tablets to consume. She admitted in her statement that she lived with her husband at Army Cant, Pune, where she was very happy. The allegation that her brother-in-law entered her bedroom and molested her is missing from her statement recorded under Section 161 Cr.P.C. The dispute between the spouses appears to be mainly because of trivial issues arising out of non-compatibility with each other. In the proceedings which were initiated by the complainant with the petitioners' Commanding Officer, a fair portion of the petitioner Praveen's salary has been ordered to be paid to the complainant by way of maintenance. During the proceedings of this bail application, the petitioners, on the demand made by the complainant's counsel, agreed to handover a draft of Rs. 4,00,000/- to the complainant towards her remaining dowry articles. The draft was offered during the course of the hearing but the complainant refused to accept the same insisting that she was desirous of resuming the matrimonial ties. Upon this, mediation was attempted but proved unsuccessful. In this view of the matter, custodial investigation of the petitioners in this case is not warranted. The petitioners are both army men serving the Nation. If they are arrested, any possible chances of re-conciliation between the parties would be extinguished forever.

12. Thus, having regard to the facts and circumstances available on the record, but without expressing any opinion on the merits of the case, it is considered to be just and proper to grant anticipatory bail to the petitioners.

13. Accordingly, the anticipatory bail application is allowed and it is directed that upon the petitioners depositing the demand draft of Rs. 4,00,000/- in the

complainant's name with the investigating officer, and in the event of arrest of petitioners (1) Praveen Kumar Sonkar S/o Gulab Sonkar and (2) Naveen Sonkar S/o Gulab Sonkar, in connection with the FIR No. 111/2015, registered at Women Police Station, Udaipur City, District Udaipur, they shall be released on bail; provided each of them furnishes a personal bond in the sum of Rs. 50,000/- along with two sureties of Rs. 25,000/- each to the satisfaction of the concerned Investigating Officer/S.H.O. on the following conditions:--

"(i). that the petitioners shall make themselves available for interrogation by a police officer as and when required;

(ii). that the petitioners 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 any police officer; and

(iii). that the petitioners shall not leave India without previous permission of the court."