
(2009) 04 DEL CK 0523

In the Delhi High Court

Case No : Bail Application No. 883 of 2008 and Criminal M.B. 593 of 2008

Rajesh Manchanda and Others

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 22-04-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 437
Penal Code, 1860 (IPC) — Section 34, 406, 498A

Citation : (2009) 04 DEL CK 0523

Hon'ble Judges : Mool Chand Garg, J

Bench : Single Bench

Advocate : J.M. Bari, for the Appellant; Navin Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Mool Chand Garg, J.—This petition for grant of Anticipatory Bail has been filed by petitioner No. 1m the husband and in-laws of the complainant, Smt. Sarika Saluja in case FIR No. 114/2008 registered on 26.03.2008 at Police Station Hari Nagar at the instance of the complainant after all efforts for conciliation failed before the CAW cell. It is also submitted that a notice to arrest the petitioners was given by the concerned SHO and for that reason present petition has been filed afresh.

2. It has been submitted by the petitioners that complainant was married to petitioner No. 1 according to Hindu Rites on 25.11.2001 but was residing separately from him with effect from 25.1.2003. The complaint for the first time was lodged by the complainant in January, 2008 on which basis an enquiry was held. The petitioner filed an application for the grant of anticipatory bail soon thereafter and was protected by the Additional Sessions Judge by an order directing the Police Authorities to give a notice of seven days in case the petitioner was to be arrested after the registration of FIR at the instance of the complainant.

3. In her complaint Smt. Sarika Saluja had alleged that petitioner No. 1/husband troubled her for the money and that he also, used to take liquor and used to beat her beside demanding money to be brought from her parent's house. She also alleged that petitioner No. 1 has taken loan of Rs. 8 lacs from her mother and is not returning that amount. He is also having illicit relationship with his bhabhi. The complainant also asked that all of istridhan which is in the possession of her in-laws may be returned to her.

4. According to the petitioner all the aforesaid allegations are false and frivolous because the complainant is living in the house of her mother with effect from 10.1.2006 and she has approached the CAW Cell in the month of January, 2008 and it is thereafter an FIR was registered. It has been submitted that all the goods and articles belonging to the complainant have already been taken by her and only few articles such as T.V., refrigerator, double bed, dressing table, centre table and almirah are lying in the matrimonial home. The washing machine which was in unrepairable condition was given to Kabadhi with the consent of the complainant, besides that other clothes were taken by petitioner No. 1 and the complainant after they had decided to live separately. It is also submitted that the husband was always ready and willing to return even those articles and in fact he wanted the complainant to live with him along with the child born from the wedlock and for this purpose he has filed a petition for restitution of conjugal rights.

5. It is also submitted that the complainant is under the influence of her mother and does not want to settle with the petitioner. It is submitted that petitioner No. 2 is a man of means and is the owner and in possession of property No. 23, Rashid Market, First Floor, Gali No. 4, Near Geeta Colony, Delhi, the present market value of the same is more than Rs. 18 lakhs. Petitioner No. 3 has his own shop in Gole Market and petitioner No. 1 works and earns Rs. 4000/- per month. Other petitioners have also very good roots in the society. It is also submitted that they have never demanded any dowry from the complainant. It is also submitted that their application for grant of anticipatory bail was dismissed by the Additional Sessions Judge vide order dated 24.4.2008 by taking a wrong notion of the allegations made in the FIR and by making a new case for the complainant inasmuch as the Additional Sessions Judge has observed that petitioner No. 1 has taken loan from the mother-in-law but he is not willing to pay the same even though it was never admitted by the petitioner.

6. I have heard the submissions from both sides.

7. The bail application came up before this Court for hearing for the first time on 29.4.2008. As per the said order petitioner No. 2 to 8 were directed to be released on interim bail till the next date of hearing subject to each of them filing personal bond in the sum of Rs. 10,000/- with one surety each in the like amount to the satisfaction of the Investigating Officer, subject to their cooperating in the investigation. However, as far as petitioner No. 1 is concerned it was held that there is no case made out for the grant of any interim protection.

8. On 22nd May, 2008 when the matter was fixed before this Court for hearing, on instructions from the petitioner, Counsel for petitioner No. 1 submitted that the petitioner shall pay Rs. 3500/- per month for the maintenance of minor child Ishan Manchanda born from the wedlock without prejudice to the rights and contentions of both the parties in all pending proceedings. Such amount was directed to be paid on or before seventh day of each English Calendar month. The said amount was directed to be accepted without prejudice to the rights and contentions of the parties.

9. The matter was referred to Delhi High Court Mediation Cell but there on 17.10.2008 it was informed that parties are re-thinking to find out the possibility of reconciliation as they have a child of six years.

10. On 19.11.2008 the following orders were passed:

Complainant-wife is ready to live with Petitioner No. 1 - husband in a separate rented accommodation provided husband put some amount in a fixed deposit in the name of the child so that she has some assurance about the maintenance of the child. Counsel for the petitioner has stated that petitioner is ready to have separate accommodation on rental basis and is also ready to put a sum of Rs. 4 lakhs in the form of fixed deposit in the name of the child under the guardianship of complainant-wife. Counsel states that he will bring the fixed deposit on the next date of hearing.

Renotify on 19th December, 2008.

Parties are at liberty to do the needful in the meanwhile. Till then, interim orders to continue.

11. However, on 3.2.2009 at request of Counsel for the petitioner, the following orders were passed:

Counsel for the petitioner has not brought the fixed deposit in the sum of Rs. 4 lakhs in Court today as admitted by him vide order dated 19th November, 2008. He submits that he will bring the same on the next date of hearing. List this matter for hearing on 8th April, 2009. Interim order, if any, to continue.

12. On 8.4.2009 when the matter was taken up it was stated by the petitioner that he was not willing for any settlement and therefore the matter was heard on merits.

13. Thus it would seen that despite availing various opportunities and indulgence from this court, the petitioner except for taking time has not shown any genuine interest in settling the matter with the complainant.

14. At this stage, it would be appropriate to take note of the allegations made in the letter dated 21.4.2003 which has been filed by the petitioner himself:

April 21, 2008

To

The SHO

Police Station: Hari Nagar

Delhi.

In the matter of:

FIR No. 114/2008 dated 26.03.2008 Under Sections 406 & 498A IPC registered on the basis of complaint made by Mrs. Sarika Saluja @ Manchanda, w/o Shri Rajesh @ Sonu Manchanda assigned to IO Mr. Nirakar Kaushik, ASI

Sir,

In respect of the above FIR I, Shri Rajesh @ Sonu Manchanda the husband of the complainant made by Mrs. Sarika Saluja @ Manchanda have to say that at the first time I have come to know through the above FIR that the complainant Sarika is requesting your goodself to get her all her Stridhan back to her from her in laws. In this regard I have to submit that presently the following items of the common/ joint use are lying in the matrimonial house, for which myself or for that matter any of the persons named in the above FIR have no objection that the said items be taken by the complainant Sarika directly or through your goodself at any time.

1. T.V. LG 21 Inch
2. Fridge
3. Double Bed
4. Dressing Table
5. Central Table
6. Almirah
7. Khesia - 2
8. Pillow with cover ? 2
9. Dinner Set (Steel)
10. Cooker 5 Ltr.
11. Cooker 3 Ltr.
12. Mattresses ? 2
13. Dinner Set Unbreakable
14. One steel Bucket
15. One Wall Clock
16. Woolen Cover

Out of the absolute and personal property of wife, the articles of the exclusive

use of the wife and child such as all ornaments golden and silver and the cloths are already taken by the wife and the furniture and utensils of the common/joint use of the husband and wife are lying in the matrimonial house. The same can be taken at any time by the wife.

It is also important to clarify that customary gifts given to relatives of husband or to the husband and the incidental expenses incurred at the occasions of the necessary ceremonies of the marriage or thereafter and the goods and items already consumed would not fall within the meaning of stridhan. However, the other items meant for common use would fall within definition of stridhan.

Some items which were already broken and unusable and were disposed of by the husband and wife jointly cannot be returned. Such item is the Washing Machine.

It is prayed accordingly.

Rajesh Manchanda

S/o Late Sh. Bodh Raj Manchanda

23 Rashid Market, First Floor,

Gali No. 4, Near Geeta Colony,

Delhi ? 110051.

Telephone No. 9873149470

Copy to: Mrs. Sarika Saluja @ Manchanda, W/o Shri Rajesh Manchanda

D/o Shri Ashok Saluja, R/o 37/8, Ashok Nagar, Ist Floor, New Delhi? 18.

15. A perusal of the aforesaid letter goes to show that none of the jewellery items were returned to the complainant.

16. On 24.4.2008 when the bail application of the petitioner was taken up, the Additional Sessions Judge passed the following orders:

It is the case of the prosecution that complainant is the only child of her parents and her father has already expired. Applicants forced the complainant's mother to sell off her house and the proceeds thereof to the extent of Rs. 8 lacs were taken away by the petitioner No. 1 at the instance of the remaining applicants and they all demand dowry from her. Her Istridhan is in their custody.

Sh. Bari on behalf of applicants submit that no demand was ever made in writing by the complainant for return of her claimed articles and that there is no documentary proof regarding the money having been given. It is also submitted that the amount was in the nature of loan.

However, Sh. Bari submits that the complainant may collect furniture items from the house of the applicant. Heard.

Considering the fact that complainant is wife of applicant No. 1 and all the remaining applicants are closely related and allegations have been made against them. The amount admitted to have taken by way of loan has also not been returned. The matter would require custodial interrogation. The application is, therefore, dismissed.

17. Thus from the aforesaid it apparent that at least one of the allegations made by the complainant that petitioner had procured a loan from the mother of the complainant can be accepted as correct subject to evidence of the party. This amount has not been returned. Efforts made for conciliation have failed because the petitioner was not willing to even comply with his own assurances given to the Court. It is true that this Court while considering the bail application for anticipatory bail may not be able to impose conditions other than what have been specified u/s 437 Cr.P.C. as has been laid down by the Apex Court in the case of *Munish Bhasin and Others Vs. State (Govt. of N.C.T. of Delhi)* and *Another*, and in the case of *Sunder Babu and Ors. v. State of Tamil Nadu* delivered in Criminal Appeal No. 773/2003 decided on 19.02.2009, nothing prevents this Court to make an effort for conciliation if the parties are willing to do that and it is for this reasons the matters are also referred to Conciliation Centre so as to avoid any harassment to either of the parties who in fact in matrimonial relationship with each other and many a times differences do arise on account of number of factors besides the demand of dowry.

18. I have also gone through the judgments relied upon by the petitioner, i.e.:

(i) *Parmod Kumar Oberoi and Ors. v. Radha Rani* 1991(1) C.L.R. 524 (P&H).

(ii) *G. Sagar Suri and Another Vs. State of U.P. and Others*, .

(iii) *Raj Pal Singh v. State of Haryana* 2000(3) RCR (Cri) 135 (P&H).

(iv) *Smt. Neera Singh v. State (Govt. of NCT of Delhi) and Ors.* judgment dated February 21, 2007 in Crl.M.C. 7108/2006 passed by Justice S.N. Dhingra, Judge, High Court of Delhi.

(v) *Smt. Neera Singh v. State (Govt. of NCT of Delhi) and Ors.* judgment dated February 23, 2007 in Crl.M.C. 7262/2006 passed by Justice S.N. Dhingra, Judge, High Court of Delhi.

(vi) *Smt. Sangeeta Kalra v. State*, judgment dated March 02, 2007 passed in Crl.M.C. 98/2006 by Justice S.N. Dhingra.

(vii) *Pratibha Rani Vs. Suraj Kumar and Another*,

(viii) *Indian Oil Corporation Vs. NEPC India Ltd. and Others*, .

(ix) *Onkar Nath Mishra and Others Vs. State (NCT of Delhi) and Another*, .

(x) *Besai Venkata Ramana Murthy v. State by Station House Officer IV Town Law & Order Police Station, Visakhapatnam* 2003(4) RCR (Cri) 597 (AP).

(xi) Tarlok Singh v. State of Punjab 1998(2) RCR (Cri) 590 (P&H).

(xii) Shakuntala v. The State of Delhi, judgment dated February 26, 2007 in Crl.M.C. 5536/2006 passed by Justice S.N. Dhingra, Judge, High Court of Delhi.

19. However none of these judgments have any application on the facts of this case inasmuch as the allegations of cruelty are writ large in the complaint made by the complainant against the petitioner and other in laws of the complainant. To quote a few, I would just take down the portion of the complaint which has been lodged by the complainant against the petitioner:

My marriage was solemnized on 25.11.2001 as per the Hindu rites and ceremonies with son of Shri Bodh Raj Manchanda and Smt. Roppa Manchanda. We were living together with whole family of my husband consisting of mother-in-law Roopa Manchanda, my husband Rajesh Manchanda, elder brother (Jeth) Rakesh Manchanda, Bhabhi (Jethani) Veena Manchanda and two sons of Jethani. I humbly request that I am very much harassed by the atrocity of my husband. My husband works with his elder brother but he troubles me for the money. My husband takes all kinds of intoxicants. He beats me and demands money. In the today's age of dearth I am being tortured in the hands of my husband for fulfilling his arbitrary demands. He frequently beats me for money and pressurizes me to bring money from my parents house. In my parents house my mother is living alone. My father is no more. There is no other brother or sister. I am sole child of my mother. My whole articles and jewellery is in in-laws house. My husband had taken Rs. 8,00,000/- from my mother which he is not returning. I am for one year from 10.1.2006 living in the house of my mother. My mother bears the expenses of my child with great difficulty. I have no other source of income. When I asked for the expenses of child, my jeth and husband refused and threaten that they have big contacts. Six years have passed from my marriage and I was tolerating till date so that house is not broken and there is no insult but now it is beyond my tolerance because there is illicit relations between my husband and jethani. I want your help. My mother has given dowry beyond her capacity which is in the possession of my in-laws. Therefore, I request that my whole stridhan which is in the possession of my in-laws be returned back to me. The legal action against following persons of my in-laws be taken: (1) Rajesh Manchanda (husband), (2) Roop Rani Manchanda (mother-in-law), (3) Rakesh Manchada (Jeth), (4) Veena Manchanda (Jethani), (5) Pinki @ Kiran Mehra (Nand), (6) Shashi Mehra (Nandoi) (7) Parents of Jethani, Applicant Sarika Manchanda D/o Late Shri Ashok Saluja and Kamal Saluja R/o 37/8, Ashok Nagar, New Delhi ? 110 018, my husband Rajesh Manchanda, R/o 23, Rashid Market, Gali No. 4, Near Geeta Colony, Phone Nos. 98731494570. Duty officer to register a case u/s 498-A/406/34 IPC and hand over the investigation to ASI Nirakar Kaushik. Sd/- English SHO/HN 26,3,08. On receipt of the complaint the case was registered for the above offences and a computer copy of the FIR and original complaint as per the order of SHO, was given to SI Nirakar Kaushik which will be used for further investigation. The other copies will be sent through post to the

High Officers.

20. The aforesaid allegations are specific at least to the extent that the complainant was treated with cruelty by the husband and other in-laws primarily for two reasons: (i) the husband is not willing to repay the amount of loan taken from the mother of the complainant ; (ii) He is maintaining illicit relationship with his bhabhi.

21. The aforesaid are sufficient to hold that prima facie allegations of extending cruelty qua the complainant are made out against the petitioner.

22. In these circumstances, I direct that petitioner Nos. 2 to 8 if arrested in connection with F.I.R. No. 114/2008 u/s 406/498-A/34 IPC registered at Police Station Hari Nagar, they shall be released on bail on their furnishing personal bond in the sum of Rs. 10,000/- each with one surety each in the like amount to the satisfaction of the Arresting Officer/Investigating Officer. However, I do not find any merit in the application of petitioner No. 1/husband, which is hereby dismissed.

23. Bail application is accordingly partly allowed.