
(2011) 11 RAJ CK 0058
In the Rajasthan High Court

Case No : Criminal Miscellaneous Bail Cancellation Application No. 725 of 2011

Smt. Shalini Rajawat

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 04-11-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 167(1), 438, 438(2), 439(2)
Penal Code, 1860 (IPC) — Section 323, 34, 406, 498A, 506

Citation : (2012) 3 RLW 2346

Hon'ble Judges : Raghuvendra S. Rathore, J

Bench : Single Bench

Advocate : Kapil Gupta, for the Appellant; G.S. Rathore, Public Prosecutor, R.D. Rastogi and Ravindra Kumar Singh, S.I. Manila Thana, Jaipur City (East), Present in Person, for the Respondent

Final Decision : Allowed

Judgement

Hon'ble Raghuvendra S. Rathore, J.—The complainant petitioner Smt. Shalini Rajawat has filed this application u/s 439(2) Cr.P.C. for cancellation of anticipatory bail granted to Sidharth Singh, respondent No. 2 by this Court on 11.11.2010. It has been prayed that the cancellation application be allowed and the order of anticipatory bail passed by this Court on 11.11.2010 be set aside. Further, it has been prayed that the accused be ordered to be arrested in the present case. On a complaint lodged by the petitioner, a first information report (124/2010) came to be registered at Police Station Mahila Thana, Jaipur City (East) for the offences u/s 498-A and 406 IPC. The petitioner had made detail averments in the complaint alleging that she had been harassed, demand of dowry was made and her dowry articles have been retained by the accused persons. Alongwith the report, a list of dowry articles was also attached which included gold jewellery, diamond jewellery, car, cloths jewellery which was given by the relatives at the time of marriage and gift items. After commencement of the investigation in furtherance of the report lodged against the accused, he apprehended arrest and therefore application u/s 438 Cr.P.C. (10231/2010) was

filed by him for grant of anticipatory bail. After hearing the parties at length, this Court had allowed the application for anticipatory bail on 11.11.2010 subject to a condition. It was ordered that the accused petitioner (respondent No. 2 herein) shall handover the dowry articles to the Investigating Officer. After receiving the said articles from the accused, the Investigating Officer was to handover the same to the complainant.

2. The primary grievance of the complainant in the present application is that the accused respondent has not handed over complete dowry articles which was given to her at the time of marriage. It is also the case of the petitioner that so far as the dowry articles of jewellery are concerned, the accused had given artificial jewellery and the Investigating Officer had taken the same even through the complainant had refused. Therefore, the case of the complainant petitioner is that the accused respondent has failed to fulfill the condition levied by this Court while granting the anticipatory bail and as such, the concession of anticipatory bail be withdrawn and the order dated 11.11.2010 be set aside.

3. It has been submitted by the counsel for the complainant petitioner that order dated 11.11.2010 passed by this Court was very categorically that grant of anticipatory bail to the petitioner was subject to the condition that the petitioner shall handover the dowry articles to the Investigating Officer, who after receiving the same shall give them to the complainant petitioner. He has referred to the contents of the first information report as well as the list of dowry articles attached to it for emphasising the fact that number of articles were given at the time of marriage which included the gold and diamond jewellery. He has also referred to the bills/cash memos of the showrooms from where the said jewellery was purchased by the parents of the complainant wife and the same has not at all been returned by the accused. The counsel for the petitioner has submitted that- by returning the artificial jewellery in place of gold jewellery, the accused has not only violated the condition imposed while granting anticipatory bail but had also committed a fraud on the Court. He has further submitted that the Investigating Officer ought to have asked the accused to return gold jewellery and on his failure to do so, he should not have released the petitioner on execution of bonds in furtherance of the order of granting anticipatory bail. Moreover, the Investigating Officer should have immediately approached this Court intimating that the accused has not complied with the order passed on 11.11.2010 and has returned artificial jewellery in place of gold and diamond jewellery. In support of his submission, the learned counsel for the petitioner has placed reliance on the cases of *S. Shanmugam vs. State by Inspector of Police & Ors.*, 2005(2) Cri 596 and *Sarita vs. State of Rajasthan through Public Prosecutor & Anr.*, 2011(1) Cr.L.R. (Raj.) 353.

4. The learned counsel for the accused respondent has opposed the prayer made by the complainant petitioner for cancellation of anticipatory bail and submitted that there is no just reason for the same. The learned counsel for the accused had made detail submissions so as to show that the jewellery articles were with

the complainant and whatever had remained with the accused was given to the Investigating Officer. Therefore, it has been submitted on behalf of the accused-respondent that there is no force in the submission made by the counsel for the petitioner and the application for cancellation of anticipatory bail deserves; to be dismissed. The learned counsel for the accused has placed reliance on the case of Devender Kumar and Another etc. Vs. State of Haryana and Others etc., .

5. After having given my anxious and thoughtful consideration to the submissions made by the counsel for the rival parties and on careful perusal of the material on record, including the order dated 11.11.2010 passed by this Court, while allowing the anticipatory bail application of the accused, this Court is of the considered opinion that the submissions made by the counsel for the complainant petitioner has substance. While passing the order on anticipatory bail application, this Court had observed as under: -

...I deem it just and proper to grant indulgence of anticipatory bail to the petitioner subject to the condition that the petitioner shall hand over the dowry articles to the Investigating Officer. On having received the dowry articles from the petitioner, the Investigating Officer shall handover the same to the complainant.

Consequently, the application for anticipatory bail is allowed, subject to the aforesaid condition

In other words, fulfillment of the condition imposed by this Court while allowing the anticipatory bail application was a condition precedent before giving concession of anticipatory bail to the accused person. It was incumbent on the accused petitioner (respondent No. 2 herein) to have first return of the dowry articles to the Investigating Officer before being benefited of the anticipatory bail and executing the bail bonds in furtherance of it. Likewise, the Investigating Officer Should have seen that the order passed by the Court, particularly the condition imposed therein, had been fully complied with by the accused in its letter and spirit. When the Investigating Officer found that the jewellery returned by the accused were artificial and not of gold/diamond then he should not have proceeded in furtherance of the order passed by this Court on 11.11.2010 for giving the benefit of anticipatory bail to the accused on executing the bonds. In fact, the Investigating Officer ought to have brought the fact of returning of artificial jewellery by the accused to the notice of this Court and sought appropriate orders in that regard. A perusal of the first information report, list of articles attached to it and the bills of jewellery showrooms leave no room of doubt that gold/diamond jewellery was definitely part of the dowry articles of the complainant wife.

6. Besides, the principles of law is very clear that when any order is passed in favour of a person subject to a condition then the said condition is a pre requisite for taking benefit under it. In other words, the condition imposed by this Court i.e. to hand over the dowry articles to the Investigating Officer by the accused,

was to be fully complied with. By returning artificial jewellery, the accused person has not only violated the condition imposed by this Court, while granting the benefit of anticipatory bail on 11.11.2010 but has rather committed a fraud on the Court. Similarly, the act of Investigating Officer by receiving such artificial jewellery from the accused and his failure to inform this Court in this regard also needs to be deprecated. In the case of Sarita (supra), it has been held by a Co-ordinate Bench of this Court that looking to the conduct of the accused and the fact that the recovery of dowry articles has not been effected, the bail granted to him deserves to be cancelled. Similarly in the case of S. Shanmugam (supra), Madras High Court held that since the accused respondents thoroughly violated the order in not observing the condition and falsely pleaded that they obeyed the condition, the anticipatory bail granted is liable to be cancelled. The Hon"ble Court, in para 3, had observed as under: -

3. A perusal of the records and the submissions made by both sides, all the above would be indicative of the fact that the Respondents 2 to 6 have thoroughly violated the order in not observing the conditions imposed by the Court of Sessions at the time of granting anticipatory bail and they sought for relaxation of the conditions by making a specific averment in the application that they have been strictly following the conditions by reporting to the Police Station and it is nothing but a statement of falsehood. In such circumstances, this court without any hesitation whatsoever, has to necessary cancel the anticipatory bail originally ordered by the Court of Sessions. The learned counsel for the Respondents 2 to 6 would submit that a charge sheet has been laid and PW.1 has been examined and hence, the order of the lower court granting anticipatory bail need not be cancelled. While the Respondents 2 to 6 have not obeyed the conditions imposed by the Court, of Sessions, they have also made an application with false averments and in the opinion of this court, that would be suffice to cancel the anticipatory bail and accordingly the order of anticipatory bail granted earlier by the Sessions Court in Crl. M.P. No. 1377/2004 is hereby cancelled by this order of this court and this Criminal Original Petition is allowed.

7. So far as the case of Devender Kumar (supra) relied upon by the counsel for the accused respondent is concerned, it was passed in a totally different fact situation and as such, it renders no assistance to the accused. In the said case, the accused Devender Kumar was produced before the learned Judicial Magistrate, Palwal on 8.10.2008 in connection with the FIR No. 333 dated 18.9.2008, registered at Hodal Police Station, District Faridabad under Sections 498-A, 406, 506, 323 read with Section 34 IPC. Thereafter, an application was filed for police remand by an officer of the rank of Assistant Sub-Inspector, which was rejected on 8.10.2008, as the said application was contrary to Sec. 167(1) Cr.P.C. Accordingly, the accused was remanded to judicial custody and was directed to be produced on 22.10.2008. Subsequently, an application was made by the SHO, Hodal on 9.10.2008 praying for grant of police remand of the accused Devender Kumar for a period of three days. It was mentioned that custodial interrogation of the accused was necessary for recovery of the dowry

articles. The said application was dismissed by the learned Magistrate on 10.10.2008. The Magistrate granted bail to the accused by another order passed on the same day. Thereafter, the complainant filed a miscellaneous petition before the High Court with the prayer for cancellation of bail granted to the accused. She also prayed for quashing of orders by which application for remand of the accused was rejected. The High Court, vide order dated 19.3.2010, allowed the miscellaneous petition and quashed the order dated 8.10.2008 and 10.10.2008 holding that the accused had made a disclosure of the dowry articles given to him and they were lying at his house in Delhi which could be identified and recovered.

It was against the said order of the High Court that the accused Devender Kumar filed the bail before the Hon''ble Apex Court. It was in the aforesaid circumstances that the Hon''ble Supreme Court, in para 14, observed as under:

14. Bail had been granted to the Appellants by the learned Magistrate, Palwal, on 10.10.2008, and as indicated hereinbefore, there is no allegation that the same had been misused or that any attempt had been made after the appellants were granted bail to recover the articles alleged to have been given to Appellant 1 at the time of marriage with the complainant. The reason given by the High Court for cancellation of the orders, granting bail and directing the arrest of the appellants on the ground that disclosures have been made by the Appellants and that their police custody was necessary for recovery of the same, is, in our view, not sufficient for the purpose of cancellation of bail granted earlier.

8. On having considered the specific order passed by this court on 11.11.2010 which was made subject to a condition and the same having not been fulfilled by the accused respondent, this Court is of the view that the submissions as well as the prayer made by the counsel for the complainant petitioner deserves to be accepted. It was made very clear in the order passed by this court while allowing the anticipatory bail application that the same was subject to the condition. The accused respondent has not only failed to fulfill the condition by not returning the dowry articles but has committed serious misconduct by returning the artificial jewellery articles in place of gold/diamond jewellery. The articles so recovered, the list of which was prepared by the SHO and filed alongwith the challan, fully proves that the accused respondent had in place of jewellery articles handed over the Investigating Officer items of artificial jewellery.

Apart from the above mentioned case law in respect of fulfilling the condition imposed by the Court as a condition precedent, the Hon''ble Apex Court in the case of State of Punjab Vs. Raninder Singh and Another, has also laid down that anticipatory bail application can be cancelled if the condition imposed by the Court is not fulfilled". The Hon''ble Apex Court had, in para 5, observed as under:-

5. It may be mentioned here that Section 438(2) of the Code of Criminal Procedure is very clear that while granting anticipatory bail the Court can lay

down a condition that the accused shall make himself available for interrogation by a police office as and when required. The purpose of such a provision is that anticipatory bail cannot be permitted to be abused. It is therefore, implicit that whenever the Court imposes such a condition in its order, and the accused called for interrogation or for certain investigation does not appear before the Investigating Officer then it will be open for the State to move the High Court for cancellation of bail.

9. For the reasons given hereinabove as well as the settled principles of law laid down by the Hon''ble Apex Court, the inevitable conclusion is that as the accused respondent has failed to fulfill the condition imposed by this Court, while granting concession of anticipatory bail on 11.11.2010, there is no just reason to continue it any further and the same deserves to be quashed and set aside. Consequently, the application for cancellation of bail filed by the complainant petitioner is allowed. The order of anticipatory bail passed by this Court on 11.11.2010 is set aside. The prosecution is directed to take immediate steps in consequence thereof.