

IN THE HIGH COURT OF DELHI

Bail Application No.2334/2007

Shashi Kapoor Petitioners
! through: Ms.Geeta Luthra, Advocate with
Mr.Attin Shankar Rastogi, Advocate.

VERSUS

\$ State of NCT of Delhi Respondent
^ through : Mr.Jaideep Malik, Adv. for State.
Mr.Reetesh Singh, Adv. with
Mr.Sarfaraz, Adv. for complainant.

Bail Application No.2351/2007

Uma Kapoor Petitioners
! through: Ms.Geeta Luthra, Advocate with
Mr.Attin Shankar Rastogi, Advocate.

VERSUS

\$ State of NCT of Delhi Respondent
^ through : Mr.Jaideep Malik, Adv. for State.
Mr.Reetesh Singh, Adv. with
Mr.Sarfaraz, Adv. for complainant.

% DATE OF DECISION: 31.10.2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y
2. To be referred to the Reporter or not? Y
3. Whether judgment should be reported in Digest? Y

: **PRADEEP NANDRAJOG, J.**

FIR No.259/07 Dated 12.4.2007

U/S 498A/406/34 IPC

P.S. Punjabi Bagh

1. It appears to be a case of commercial-cum-matrimonial dispute.

2. Uma Kapur and Shashi Kapur seek pre-arrest bail in the afore-noted FIR which has been lodged by Aakanksha. Shashi Kapur is the wife of the younger brother of the father-in-law of the complainant. Uma Kapur is the mother-in-law of the complainant.

3. Complainant married Shashank Kapur on 27.6.2004. She claims that her father spent Rs.1.5 crores when marriage took place.

4. Allegations in the F.I.R. are that her husband was a drunkard and a drug addict and that after marriage the couple proceeded to Spain for their honeymoon. Shashank misbehaved with her and hit her. From Spain, they reached London. At London also her husband would remain in drunken condition. They were left with no money. She rang up her father-in-law and requested that some money may be sent to them. He refused. Her father had to send money. They came back to Delhi. Shashank apologised for whatever had

happened. They went back to London and set up residence. At London her husband used to regularly assault her. She was compelled to leave London and come back to India. That her mother-in-law and her chachi saas (Shashi Kapur) had taken away her entire jewellery.

5. According to petitioners, Aakanksha and Shashank knew each other since the year 2000. It was a love marriage. Marriage was solemnised on 27.6.2004. It was a dowry less marriage. After the marriage, Parveen Gupta, father of the complainant and Sunil Gupta, younger brother of the father of the complainant started demanding money from Shashank's father. They told that they were in financial hardship. A company, M/s Suave Apparels Pvt.Ltd. was a family concern of Parveen Gupta and his brother. M/s Walaity Ram Kewal was their family firm. M/s Manohar Lal Kapur & Sons Pvt.Ltd. was a family firm of the father of Shashank. From the account of the said family firm, Rs.50 lacs and Rs.60 lacs were given to M/s Suave Apparels Pvt.Ltd. and M/s Walaity Ram Kewal respectively. That notwithstanding transfer of said money to the company and the family firm of the father of the complainant, it was the complainant and her family members who continued to harass the family of Shashank demanding

more and more money.

6. Transfer of money in sum of Rs.50 lacs and Rs.60 lacs to M/s Suave Apparels Pvt.Ltd. and M/s Walaity Ram Kewal is an undisputed fact.

7. Learned counsel for the petitioners urged that gravement of the allegations in the FIR pertaining to the harassment are directed only against the husband of the complainant. That only allegation against the petitioners is of retaining the dowry of the complainant. It was urged that there are no particulars of the date, place or to whom entrustment was made. It was urged that the complaint is false. That the complainant had got her jewellery in her locker.

8. Lastly, counsel submitted that the in-laws of Shashank are prepared to deposit Rs.50 lacs by means of a fixed deposit receipt and place the receipt at the disposal of the learned Trial judge. The amount could be disbursed at the end of the trial depending upon the result of the trial.

9. Opposing the application for bail, learned counsel for the complainant submitted that the petitioners are playing hide and seek with the court. That Shashank's father entered into a settlement with the complainant and her father on 4.5.2007 as per which it was agreed that Rs.2.5 crores would

be paid to the complainant in full and final satisfaction of her claim for dowry and maintenance. It was agreed that Rs.5 lacs would be paid by 8.5.2007. Rs.1.2 crores by 8.5.2007. Rs.1.25 crores would be paid by 8.6.2007. That it was further agreed that based on the settlement, the in-laws of the complainant would be granted anticipatory bail. Learned counsel for the complainant further submitted that application for anticipatory bail was filed by the petitioners before the learned ASJ. Shashank's father who was arrested applied for bail. In the application seeking anticipatory bail filed by the petitioners they relied upon the settlement dated 4.5.2007. Shashank's father obtained bail by relying upon the settlement. That on 11.5.2007 learned ASJ while adjourning the hearing of the application filed by the petitioners seeking anticipatory bail noting the settlement between the parties. That the matter was adjourned from time to time to enable the in-laws of the complainant to pay the amount as per the settlement. They failed. On 10.9.2007, learned ASJ refused to extent anticipatory bail granted. That the petitioners filed a revision petition in this Court challenging the order passed by the learned ASJ declining to extend the interim bail. That the revision petition was dismissed vide order dated 12.10.2007

on the ground that the petitioners could not predicate the claim for anticipatory bail de-hors the ground on which they had pleaded for grant of anticipatory bail, namely, settlement arrived at between the parties. Since settlement was not being adhered to, no member of the family of Shashank was entitled to anticipatory bail. It was urged by learned counsel for the respondent that in view of order dated 12.10.2007 passed by V.B.Gupta, J. dismissing the revision petition filed by the petitioners, no case was made out for grant of anticipatory bail to the petitioners. In respect of the money advanced to the company and firm of the family of the complainant, learned counsel submitted that it was purely a commercial transaction. In any case, a suit has been filed for recovery of the said amount.

10. It is not in dispute that the settlement dated 4.5.2007 arrived at was when Harish Gupta, father-in-law of the complainant and husband of Uma Kapur, was in police custody. Thus prima facie, said settlement has to be taken with a pinch of salt.

11. However, the petitioners still have a hurdle to overcome.

12. As noted above, on 11.5.2007 the petitioners filed

an application seeking anticipatory bail before the learned ASJ. They could have pleaded for anticipatory bail by projecting a case on merits and not basing their claim on the settlement between the parties. Further, having obtained interim anticipatory bail they consented to the matter being considered on the ground that the settlement required payments to be made in three installments and that money would be paid. Not only that, first installment of the agreed settlement in sum of Rs.5 lacs was also paid.

13. The subsequent conduct, to some extent, mitigates against the presumption that the settlement was the result of police coercion and since Shashank's father was arrested and was in police custody, the police personnel brokered a settlement between the parties.

14. But, issue of personal liberty has not to be decided on a bargain between the parties. Right to life and property is too precious to be bartered.

15. Even statutory rights have been placed at a high pedestal and have been held not subject to the rule of estoppel where a plea is raised that a party concerned has consented to a particular course of action, which action is in derogation of the statutory right of the party concerned.

16. In the decision reported as (1998) 6 SCC 507 P.R.Deshpande Vs. Maruti Balaram Bibatti it was observed as under :-

“9. It is now trite that the principle of estoppel has no application when statutory rights and liabilities are involved. It cannot impede right of appeal and particularly the constitutional remedy. The House of Lords has considered the same question in *Evans V. Bartlam*, (1937) 2 All ER 646. The House was dealing with an order of the court of appeal where Scott, L.J. approved contention of a party to put the matter on the rule of election on the premise that the defendant knew or must be presumed to know that he had the right to apply to set the judgment aside and by asking for and obtaining time he irrevocably elected to abide by the judgment. Lord Atkin, reversing the above view, has observed thus :

“My Lords, I do not find myself convinced by these judgments. I find nothing in the facts analogous to cases where a party, having obtained and enjoyed material benefit from a judgment, has been held precluded from attacking it while he still is in enjoyment of the benefit. I cannot bring myself to think that a judgment-debtor, who asks for and receives a stay of execution, approbates the judgment, so as to preclude otherwise. Nor do I find it possible to apply the doctrine of election.”

10. Lord Russell of Killowen while concurring with the aforesaid observations has stated thus :

“My Lords, I confess to a feeling of some bewilderment at the theory that a man (who, so long as it stands, must perforce acknowledge and bow to a judgment of the court regularly obtained), by seeking and

obtaining a temporary suspension of its execution, thereby binds himself never to dispute its validity or its correctness, and never to seek to have it set aside or reversed. If this were right, no defeated litigant could safely ask his adversary for a stay of execution pending an appeal, for the grant of the request would end the right of appeal. The doctrine of election applies only to a man who elects with full knowledge of the facts."

17. In the decision reported as Upalaniappan & Anr. Vs.

Sub Inspector of Police 2005 SCC (CrL) 1586, a condition requiring the accused to pay Rs.10 lacs for securing the benefit of bail was held to be onerous.

18. No doubt, while granting bail or anticipatory bail, conditions can be imposed but the conditions cannot be such which amount to compelling a person to buy his or her freedom.

19. In my considered opinion, petitioners are entitled to have their case considered for grant of anticipatory bail on merits, ignoring the settlement which Shashank's father executed with the complainant.

20. Thus, order passed by my learned brother V.B.Gupta, J. dismissing the revision petition filed by the petitioners challenging the order passed by the learned ASJ refusing to extend the interim anticipatory bail granted to them would not come in the way of the petitioners and the

petitioners would be entitled to have their case considered for grant of anticipatory bail on merits.

21. Reverting to the merits of the controversy, suffice would it be to note that allegations of harassment in the FIR do not relate to dowry demand at all. Further, the allegations of harassment are directed against Shashank. Even read very liberally, the FIR does not make out the offence under Section 498A against the petitioners.

22. Pertaining to the offence under Section 406 IPC, relevant would it be to note that only allegations in the FIR which are referable to entrustment are as under :-

“My mother-in-law and chachi saas took my entire dowry articles including ornaments and did not give back to me despite various requests.”

23. When was the jewellery entrusted to the petitioners has not been stated by the complainant. Further, the complainant and her husband set up their matrimonial house in London. A strong presumption would arise that the complainant had kept with her the jewellery which was gifted to her at the time of her marriage. Besides, the complainant has a locker in her name in a bank. She operates the locker. This re-enforces the presumption that the complainant had custody of her jewellery with her.

24. I have prefaced the present order by opining that it appears to be a matrimonial-cum-commercial dispute. As noted hereinabove, over Rs.1.1 crore has been transferred from the coffers of the firm of Shashank's family to the family company and firm of the complainant. The said amount has yet to be returned. A civil suit is pending on the Original Side of this court pertaining to the money advanced.

25. It is thus not a case where the family of the girl was in a subservient position to the family of the in-laws. The two families appear to be in an equal position of bargain.

26. Issue which arise for consideration from the allegations in the FIR pertaining to the entrustment of the dowry of the complainant requires trial.

27. While granting bail or anticipatory bail, the entrensic worth of the evidence which the prosecution has martialled against the accused has to be taken note of and constitutes a circumstance to be kept in mind along with other circumstances while considering the application.

28. Petitioners have their roots in India. There is no fear of the petitioners absconding from justice. Petitioners are respectable house wives. There is no fear expressed that they would threaten the witnesses of the prosecution or would

tamper with evidence.

29. As noted above, learned counsel for the petitioners submitted that Shashank's family is prepared to deposit Rs.50 lacs by means of a fixed deposit receipt with the learned ASJ subject to any orders which may be passed at the end of the trial.

30. I thus dispose of the petitions directing that within three weeks from today petitioners would deposit in the trial court a fixed deposit receipt in sum of Rs.50 lacs, deposit being with a nationalised bank for a period of three years and in the name of the learned trial court, subject to said deposit being made and on the condition that petitioners would cooperate with the Investigating Officer in the conduct of investigation, in the event of arrest, petitioners would be released on bail on their furnishing personal bond in the sum of Rs.50,000/- each with one surety each in the like amount to the satisfaction of the learned I.O.

31. It would further be a term of the bail granted to the petitioners that they would surrender their passport.

32. Deposit made with the learned trial court pursuant to the present order would be subject to any further orders which may be passed by the learned trial court after evidence

is led and issue is decided or the matter is otherwise
compromised between the parties.

33. Dasti.

October 31, 2007
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PRADEEP NANDRAJOG, J.