

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **BAIL APPLN. 1161/2012**

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Reserved on: 19th March , 2013

Decided on: 22nd March, 2013

MANJU GARG & ANR

..... Petitioners

Through: Mr. M.N. Krishnamani, Sr. Adv. with
Mr. Sameer Dubey, Mr. Arun K.
Berawal, Mr. Saurabh Kansal & Mr.
Amit Kumar, Advs.

versus

STATE

..... Respondent

Through: Mr. Manoj Ohri, APP for State with
ASI Sumedha, PS Nanak Pura.
Mr. Dinesh Mathur, Sr. Adv. with Ms.
Meena Chaudhary, Adv. for
complainant with complainant in
person.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. By the present petition the Petitioners who are the mother-in-law and father-in-law respectively of the complainant Ms. Surbhi seek anticipatory bail in case FIR No. 145/2010 under Section 498A/406/34 IPC registered at PS Rohini North.

2. Learned counsel for the Petitioner contends that the Petitioners have joined the investigation on 24 occasions. Raid has already been conducted at the house and whatever items of dowry/ istridhan were there, the same have been taken away on the identification of the complainant. The allegations in the FIR against the Petitioners are at best demand of money, the veracity of

which will be adjudicated during trial. Bail is the rule and jail is an exception. The principle of the accused being innocent till proven guilty has to be borne in mind, besides balancing the same with the necessity to arrest. Since the Petitioners have joined the investigation as and when they were required, no custodial interrogation is required. The silver and gold items stated in the complaint in the FIR were given to the complainant by her parents and not to the Petitioners. Further the value of these items have been inflated. False FIRs are being registered against the Petitioners. The Petitioners are not aware that Section 82 Cr.P.C. proceedings were initiated against them and hence the same have not been mentioned in the present petition and the moment it came to their notice, they approached the learned Additional Sessions Judge, who has been pleased to stay the proceedings. Further the Petitioners have already deposited a sum of Rs. 10 lakhs in the form of a FDR in the name of the complainant with the investigating officer, as undertaken by them before this Court on 7th August, 2012 and are willing to fulfill any other condition which this Court may impose. The Petitioners are further willing to deposit a sum of Rs. 17.5 lakhs though they dispute the cost of the items as calculated by the complainant. Reliance is placed on *Siddharam Satlingappa Mhetre Vs. State of Maharashtra & Ors. AIR 2011 SC 312*.

3. Learned APP for the State on the other hand contends that there are serious allegations of preparing video film of the complainant in unwarranted condition in her bedroom with her husband which was uploaded. Though laptop, handycam and mobile phone were recovered, however they were without SIM card, memory card and SD memory card.

The moment an application for cancellation of the bail of the son of the Petitioners was filed, a locked SIM card of the mobile phone was handed over to the investigating officer. Though the father of the complainant wanted to spend Rs. 50 lakhs on the marriage, however on the insistence of the Petitioners Rs. 2 crores had to be spent. Statement of Hanuman Prashad, the domestic servant of Petitioners for the last many years was recorded who confirmed ill behavior by the accused persons with the complainant on various occasions and also confirmed that dowry articles used to come from complainant's parents house loaded in tempo and cars on every occasion. Though the Petitioners deposited a booklet in Police Station on 16th March, 2012 which includes photocopies of the complainant's passport, viza papers, medical papers and certain typed SMS (text messages), however till date the original of these documents have not been given nor the source of the said SMSs have been furnished. Though raid was conducted, however no jewellery could be recovered from the bank locker. Besides demand of dowry, the complainant was treated with cruelty and she was beaten on 17th March, 2011 when she was brought back to her home by her brother. The DD entry recorded, which was duly signed by the Petitioner No.2, stated that she was not taking with her any article. On 20th March, 2011 the Petitioner No.2 came along with his son. Again there was a fight at the parental home of the complainant and a PCR call was made. When the complainant was examined on 20th March, 2011 she had bluish red bruises on her right arm. In view of the serious allegations against the Petitioners, no case for anticipatory bail is made out.

4. Learned counsel for the complainant states that besides the serious demand of dowry, the conduct of the Petitioners does not warrant grant of anticipatory bail. The seized incriminating articles have been found without any SIM card, memory card and SD memory card. When the complainant filed an application for cancellation of bail of the son of the Petitioners, a locked SIM card was given. Even things like passport, medical papers, source of SMS have been retained by the Petitioners. The Petitioners are in possession of the receipts which also they are not deliberately producing. Reliance is placed on *MCD Vs. State of Delhi and Anr. (2005) 4 SCC 605 and Chandra Shashi Vs. Anil Kumar Verma (1995) 1 SCC 421*. The Petitioner has deliberately concealed the factum of proceedings under Section 82 Cr.P.C. before this Court in the present petition. The 82 Cr.P.C. proceedings were initiated on 10th July, 2010 and on 17th July, 2010 the order was pasted on their house. Thus, when the petition before this Court was filed on 4th August, 2012 the Petitioners were very well aware of the proceedings, however this fact has been completely concealed. Reliance is placed on *Lavesh Vs. State 2012 STPL (Web) 470 SC*. The Petitioners have been taking contrary pleas, as before the Hon'ble Supreme Court they sought bail and before the learned Sessions Judge with regard to proceedings under Section 82/83 Cr.P.C. it is stated that the Petitioners have already been granted bail. The witnesses in the present FIR are being terrorized and complaints under Section 153(3)/340 Cr.P.C. have already been filed against the witness Ashwani who sold the laptop to the son of the Petitioners. The surety has no control over the Petitioners. A letter was written by Shri Vijay Mittal surety of the Petitioner No.1 on 10th January, 2013 to the investigating officer stating that he was the surety of Smt. Manju Garg but he has no

knowledge of her whereabouts. Thus no anticipatory bail be granted to the Petitioners.

5. Heard learned counsel for the parties. This application came up before this Court for the first time on 7th August, 2012 when the learned senior counsel for the Petitioners undertook to deposit Rs. 10 lakhs in the form of FDR in the name of the complainant with the investigating officer and the matter was referred to mediation. This Court further directed the matter to be listed on 30th October, 2012 and till the next date of hearing in the case of arrest Petitioners were directed to be released on anticipatory bail subject to their furnishing personal bonds with one surety with directions to cooperate in the investigation. The application was disposed of in the above terms. On 30th October, 2012 the factum of mediation process still going on was noted and the matter was adjourned to 9th January, 2013. On 9th January, 2013 this Court observed that the bail application had already been disposed of vide order dated 7th August, 2012 and the mediation had ended in a non-settlement and thus no further orders were called for in the present application. Consequently, the applications filed by the complainant were also dismissed, however the Petitioners were granted liberty to take remedies as available in law. Subsequently, an application for clarification was filed before this Court by the State and it was clarified that the order dated 7th August, 2012 granted interim protection to the Petitioners only till 30th October, 2012. Further an application was filed by the Petitioners for clarification which was withdrawn. The Petitioners preferred a special leave petition wherein the Hon'ble Supreme Court restored the anticipatory bail application and the two applications filed by the complainant and directed

that the same be disposed of after hearing the parties within two weeks from the receipt of the order in accordance with law. The matter was put up before this Court on 15th March, 2013 on an office note, when the learned counsel for the Petitioner sought time and thus the matter has now been heard on 19th March, 2013.

6. A perusal of the FIR shows a continuous demand of dowry by the Petitioners who are the mother-in-law and father-in-law of the complainant. No doubt as against the admitted amount of Rs. 10 lakhs taken by way of cheque, FDR has already been deposited by the Petitioner with the Investigating Officer, however further Rs. 10 lakhs, 50 lakhs, 35 lakhs were demanded at the time of wedding, besides whole lot of jewellery, gold and silver items. Even accepting the contention of the learned counsel for the Petitioner that since the Petitioner No.2 was involved in event management, the money was spent on various functions organized at the time of wedding, a perusal of the photographs show that gold ornaments were given to the Petitioners besides several gold coins and silver items. A reply by the Petitioners to the list of dowry articles by the complainant though admits some of the items to be given, however refuses to return the same on the pretext that the same were not istridhan. Articles given to the Petitioners at the time of marriage amount to dowry articles given in consideration of the marriage and the Petitioners are bound to return the same.

7. The incriminating articles like laptop, handycam, mobile phones etc. have not been handed over in a complete condition by the son of the Petitioners and not the Petitioners as the same belong to their son. Even the originals of passport and the medical documents of the complainant have

been retained. Further proceedings under Section 82 Cr.P.C. were initiated against the Petitioners on 10th July, 2010 and on 17th July, 2010 the order was pasted on their house. Immediately thereafter, interim protection was granted. No final order of declaring the Petitioners a proclaimed offender was passed by the learned Trial Court when this petition was filed and thus the decision in *Lavesh* (supra) has no application to the facts of the case. The allegations of beating are against the son of the Petitioners. An application for cancellation of bail of the son of the Petitioners has already been filed by the complainant.

8. Learned counsel for the Petitioners has strenuously relied on *Siddharam Satlingappa Mhetre* (supra). The Hon'ble Supreme Court in the said decision warned against false implication and also laid down that while granting anticipatory bail, a balance has to be struck between two major factors i.e. there should be no prejudice to the free, fair and full investigation and to prevent harassment, humiliation and unjustified detention of the accused. In the present case the photographs produced before this Court at the time of hearing clearly show that extensive silver and gold items were taken in dowry, however the same are now being refused to be returned on the pretext that the same are not istridhan. Learned counsel for the Petitioner in this regard has already undertaken to deposit Rs. 17.5 lakhs without prejudice to the rights of the parties.

9. In the facts and circumstances of the case, in the event of arrest, the Petitioners be released on bail on their furnishing a personal bond in the sum of Rs.50,000/- each with one surety of the like amount each to the satisfaction of the Arresting Officer/SHO concerned, further subject to the

condition that they will join the investigation as and when directed and will also deposit a further sum of Rs.17.5 lakhs in the form of FDR in the name of the complainant with the Investigating Officer within two weeks and they will not leave the country without prior permission of the learned Trial Court.

10. On filing of the charge sheet, the aforesaid two FDRs of Rs.10 lakhs and Rs.17.5 lakhs in the name of the complainant will be deposited with the learned Trial Court and will be subject to the orders passed by the learned Trial Court during trial.

11. The petition is disposed of.

(MUKTA GUPTA)
JUDGE

MARCH 22, 2013
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