

**MONIKA @ MONA RANI
VS
STATE OF PUNJAB**

Present: Mr. T. P. S. Makkar, Advocate
for the petitioner.

(Through video conferencing)

Prayer in this petition is for grant of anticipatory bail to the petitioner in FIR No. 265 dated 03.12.2020, registered under Sections 498-A, 406 of the IPC and Section 4 of the Dowry Prohibition Act, 1961 at Police Station City-1 Abohar, District Fazilka.

Learned counsel submits that petitioner Monika @ Mona Rani is the married sister-in-law of complainant Shifali, who was married to petitioner's younger brother Manoj Kumar on 06.10.2011.

Learned counsel further submits that marriage of the petitioner was solemnized on 21.11.2005 and since then, she is residing at Bahadurgarh, District Jhajjar, Haryana, which is at a distance of around 300 Kms. from Malout.

It is further submitted that petitioner, is residing with her husband and 12 years old son and has nothing to do with the matrimonial life of the complainant and her husband Manoj Kumar.

Learned counsel further submits that the marriage between the complainant and Manoj Kumar was solemnized on 06.10.2011, i.e. much after the marriage of the petitioner and immediately thereafter, within a short span of eight months, there was a family partition between father-in-law Jagdish Chander Kalra and brother-in-law Rajinder Pal @ Deepak on one side and Manoj Kumar, husband of complainant, on the other side.

Learned counsel has relied upon the said partition (Annexure P-3) to submit that in the partition, on 11.06.2012, all the moveable and immovable properties were distributed amongst father and two sons.

Learned counsel has laid much emphasis on the said partition deed and submitted that though the petitioner is the daughter of Jagdish Chander Kalra, however, she was not given any share in the family properties because of the prevalent customs that after the marriage, a daughter claims no share in the family properties and everything was given to sons only.

Learned counsel further submits that if the petitioner had any greed for properties/money, she would have asked her father or brothers for her share, when partition took place in 2012, therefore, there was no occasion for her either to demand any dowry from the victim/complainant or instigate her brother Manoj Kumar to maltreat complainant.

Learned counsel refers to the FIR to submit that except the allegation that at the time of marriage, one earring was gifted to petitioner or that she had instigated her husband to demand dowry from the complainant, there is no allegation against the petitioner either of entrustment of the dowry articles, which as per FIR as attributed to father-in-law and mother-in-law and similarly, there is no allegation in the entire well drafted FIR, that after the marriage of the complainant, the petitioner ever visited the matrimonial home of the complainant since 2011.

Learned counsel further submits that even there is no allegation that petitioner was instigating husband of the complainant on mobile phone to maltreat her.

Learned counsel further argues that a perusal of the FIR would show that when the complaint was given to S.S.P., Fazilka, he has directed the

Investigating Officer, Women Cell, Abohar to conduct an inquiry and submit a report. During the said inquiry, the petitioner was never summoned or associated as she had no connection with matrimonial life of the complainant, however, despite the said fact and without following the procedure under Section 41-A Cr.P.C. and without following the guidelines laid down by Hon'ble Supreme Court in *Arnesh Kumar vs. State of Bihar, (2014) 8 SCC 273*, the petitioner has been nominated as an accused in this FIR.

Learned counsel further submits that Additional Sessions Judge, while dismissing the bail application of the petitioner, has not applied her judicial mind that the case of the petitioner is separable from the case of other co-accused, who are parents-in-law and brother-in-law of the complainant, as there is no allegation against the petitioner.

Learned counsel further submits that the bail application of the petitioner has been dismissed in a very casual manner without application of judicial mind.

Notice of motion for 09.02.2021.

Meanwhile, in the event of arrest, the petitioner be released on interim bail subject to her furnishing personal bonds and surety to the satisfaction of Arresting/Investigating Officer. However, the petitioner shall join the investigation as and when called upon to do so and shall abide by the conditions as provided under Section 438 (2) Cr.P.C.

Considering the fact that it has already been held by Hon'ble Supreme Court in number of cases that it is a common tendency that while registering the FIR under Sections 406/498-A IPC, all the family members, especially the married sister-in-laws, are involved to put pressure on the family, this fact was not appreciated by the Additional Sessions Judge, therefore, it

calls for an explanation as to how the anticipatory bail application of the petitioner was dismissed.

Accordingly, the Additional Sessions Judge, Fazilka is directed to again read the entire FIR carefully as well as the partition deed and submit an explanation on the following points:

(a) Whether the marriage of the petitioner was performed five years prior to marriage of the complainant and that too at a place which is about 300 Kms. away.

(b) Whether immediately after the marriage of complainant on 06.10.2011, a family partition took place on 11.06.2012, within a short span of eight months of the marriage of the complainant, between father-in-law Jagdish Chander Kalra and brother-in-law Rajinder Pal @ Deepak on one side and Manoj Kumar, husband of the complainant, on the other side and they divided all the moveable and immovable properties.

(c) In the said family partition, no share was given to the petitioner being married daughter and if the petitioner did not raise any claim over her family properties for a period of eight years, whether there was an occasion for her to demand any dowry from the complainant at this later stage after 9 years.

(d) When S.S.P., Fazilka had issued direction to Investigating Officer, Women Cell, Abohar to conduct an inquiry and submit a report, in view of candid case of the petitioner that during the said inquiry, she was neither

summoned under Section 41-A Cr.P.C. or given any notice, whether it presupposes that there was no specific allegation against her and without following the guidelines of Hon'ble Supreme Court laid down in *Arnesh Kumar's* case (supra), the petitioner has been arraigned as an accused in this FIR.

(e) Whether on a careful perusal of the FIR, except gifting an earring to the petitioner at the time of marriage of the complainant in 2011, there is any other allegation in the last nine years that the petitioner ever visited the matrimonial home of the complainant and made any demand for dowry or tried to influence the husband of the complainant on phone etc.

Let the explanation be submitted on or before the next date of hearing.

Exercising the *suo motu* powers, conferred under Section 482 Cr.P.C., this Court issues a show cause notice to S.S.P., Fazilka, the Investigating Officer, Women Cell, City-1, Abohar as well as complainant Shifali as to why the present FIR be not quashed qua petitioner and a heavy cost be not imposed upon complainant and Investigating Officer for falsely implicating the petitioner in this FIR.

On oral request of learned counsel for the petitioner, complainant Shifali is impleaded as respondent No. 2 to this petition.

The Registry is directed to make necessary corrections in the memo of parties and issue notice to respondent No. 2 for the date so fixed.

06.01.2021

Wassem Ansari

(ARVIND SINGH SANGWAN)
JUDGE