

Mridu Bagadia vs State on 20 May, 2022

Author: Manoj Kumar Garg

Bench: Manoj Kumar Garg

HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR

S.B. Criminal Miscellaneous Bail Application No. 2899/2022

1. Mridu Bagadia W/o Shiv Ratan Bagadiya, Aged About 62 Years, R/o House No. 10 Bagadia House Park Road, Near Ice Skating Ballygunge, Kolkata. (Mohter-In-Law)
2. Shri Shiv Ratan Bagadia S/o Lt. Shiv Bhagwan Bagadia, Aged About 65 Years, R/o House No. 10 Bagadia House Park Road, Near Ice Skating Ballygunge, Kolkata. (Father-In-Law)

----Petitioners

Versus

State, Through Pp

----Respondent

For Petitioner(s)	:	Mr. G.L. Soni, Adv Mr. Venkat Poonia, Adv Mr. R.J. Punia, Adv
For Respondent(s)	:	Mr. Mohd. Javed Gauri, P.P Mr. Vineet Jain, Sr. Adv assisted by Mr. Ashok Panwar, Adv (for complainant)

HON'BLE MR. JUSTICE MANOJ KUMAR GARG

Order Reserved on : 13/05/2022 Date of pronouncement: 20/05/2022 This anticipatory bail application under Section 438 Cr.P.C. has been filed by the petitioners apprehending their arrest in connection with FIR No. 05/2022, Police Station Mahila Thana, district Bikaner for the offences under Sections 498-A, 406 and 323 IPC.

Learned counsel for the petitioners submits that petitioners are father-in-law and mother-in-law of the complainant and no specific averment has been made in the complaint as well as in the statement under Section 161 Cr.P.C. It is argued that the (2 of 5) [CRLMB-2899/2022] complainant has alleged that she received injuries on her back whereas, no injury report was prepared at the relevant time. He further submits that specific allegation has been levelled against the husband and similarly situated co-accused i.e. sister-in-law of the complainant has already been granted bail by this Court. It is also argued that both the petitioners are in their old age and not keeping good

health, therefore, the petitioners maybe enlarged on anticipatory bail. Learned counsel for the petitioners placed reliance on the order of Delhi High Court in the case of K. Surajit Kaur Chopra Vs. N.C.T. of Delhi, order of Andhra Pradesh High Court in case of Tammenna Kaleen & Ors vs State of A.P, order of Rajasthan High Court in case of Vinita Saini Vs. State of Raj., Anil prakash Goyal Vs. State of Raj., Kartar Vs. State of Raj, Kanta Devi Vs. State of Raj. and Rajesh Chander Bhardwaj Vs. N.C.T of Delhi.

Per contra, learned Public Prosecutor and counsel for the complainant vehemently opposed the bail application and submits that in the FIR as well as statement recorded under Section 161 Cr.P.C, specific allegation has been levelled against the husband as well as present petitioners with regard to harassment and demand of dowry. It is argued that on 22.07.2021, the complainant agreed to reside at her matrimonial house on assurance that she will not be harassed in future. However, on the instigation of the petitioners, the husband started beating the complainant and turned her out of house. Further the dowry articles have also not been handed over to the complainant, therefore, the bail application may be rejected.

Heard learned counsel for the parties and perused the material available on record.

(3 of 5) [CRLMB-2899/2022] On perusal of the FIR filed by the complainant as well as statement recorded under Section 161 Cr.P.C., it is revealed that right after marriage, the husband and present petitioners started harassing the complainant mentally and physically demanding more dowry. It is also stated by the complainant that the petitioners have also wrongfully retained the dowry articles and turned her out of the in-laws house. In these circumstances, it is not a fit case for grant of pre-arrest bail to the petitioner No.2 Shiv Ratan Bagadia, however, looking to the fact that petitioner no.1 is an old lady and not keeping good health, she is enlarged on anticipatory bail.

Accordingly, the bail application is partly allowed and it is ordered that in the event of arrest of petitioner No.1 Mridu Bagadia W/o Shiv Ratan Bagadia in connection with FIR No. 05/2022 P.S. Mahila Thana, Bikaner, the petitioner shall be released on bail; provided she furnishes a personal bond in the sum of Rs.1,00,000/- along with two sureties of Rs.50,000/- each to the satisfaction of the concerned Investigating Officer/S.H.O. on the following conditions :-

- (i). that the petitioner shall make himself available for interrogation by a police officer as and when required;
- (ii). that the petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or any police officer; and
- (iii). that the petitioner shall not leave India without previous permission of the court.

So far as the petitioner no.2 Shiv Ratan Bagadia is concerned, who is father-in-law of the complainant, being an (4 of 5) [CRLMB-2899/2022] eldest person and head of the family was under

a bounden duty to protect his daughter-in-law, instead, he instigated his son to beat and harass the complainant demanding dowry. In these circumstances, it is not a fit case for granting anticipatory bail to the petitioner no.2. So far as the orders passed by other Hon'ble High Courts, cited by the counsel for the petitioners are concerned, the same does not help the petitioner as it is well settled that no court is bound by the decision of the other court in the matter of granting bail. Each bail application in every court has to be considered on its own merit. The Court considering an application for bail has to exercise discretion in a judicious manner and in accordance with the settled principles of law having regard to the crime alleged to be committed by the accused. In case of Surjit Kaur Chopra (supra), the Hon'ble Delhi High Court granted bail to petitioners therein on the ground that allegations in the FIR were primarily directed against husband and there were no allegations of dowry demand against mother-in-law and the allegations of dowry demand against father in law only related to transfer of ownership rights which were general in nature, which is not the case in hand. In case of Tahmeena Kaleem (supra), guidelines have been issued by the A.P. High Court for conducting fair investigation and if the investigating officer is satisfied that there is false implication of any person in the complaint, he may delete the names of such persons from the chargesheet. In the case of Vinit Saini (supra) and Kartar (supra), the bail applications have been decided by the co-ordinate Bench of this Court taking into consideration the facts and circumstances of the case and the case of Anil Prakash Gopal (supra) relates to quashing of FIR under Section 482 Cr.P.C. in which the co-ordinate (5 of 5) [CRLMB-2899/2022] Bench of this Court in the peculiar facts and circumstances of the case, directed the petitioner to submit a representation to the concerned Superintending of Police averring all the grounds in which have been raised in the petition. So far as the case of Rajesh Chander Bhardwaj (supra) is concerned, in the said case, the complainant wife was residing in the matrimonial house in a separate part thereof with the children and they were being provided with maintenance by the accused petitioner.

Accordingly, the bail application preferred by the petitioner No.2 Shiv Ratan Bagadia under Section 438 Cr.P.C. is hereby dismissed. However, the petitioner No.2 is permitted to surrender before the trial court within a period of 15 days from today and file an application for bail under Section 437 Cr.P.C and it is expected from the trial court that the bail application will be decided as far as possible on the same day.

(MANOJ KUMAR GARG),J 133-BJSH/-

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