

Ajay Goel And Another vs State Of Haryana And Another on 4 December, 2012

Author: Daya Chaudhary

Bench: Daya Chaudhary

Criminal Misc.No.M-33100 of 2012

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Criminal Misc.No.M-33100 of 2012
DATE OF DECISION: December 04,2012

Ajay Goel and another

.....Petitioners

versus

State of Haryana and another

.....Respondents

CORAM: - HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: Mr.R.S.Cheema, Senior Advocate with
Mr.Pawan Girdhar, Advocate for the
petitioners.
Mr.S.S.Nara, Senior DAG, Haryana.
Mr.Aman Pal, Advocate for respondent No.2.

DAYA CHAUDHARY, J.

The prayer in the present petition is for grant of anticipatory bail in case FIR No.270 dated 25.8.2012 under Sections 406,498-A,315,323,506,376,511,120-B IPC registered at Police Station Sector 5, Panchkula.

Learned senior counsel for the petitioners has prayed for bail on the ground that all family members have been implicated in the case, whereas, it was a case of simple marriage and no demand of dowry was there. The present complaint was filed on the basis of false and vague allegations just to implicate all the family members and offence under Section 315 IPC is added just to make it more serious. As per allegations in the complaint, the pregnancy was terminated due to beatings and assault given by the petitioners and other family members, whereas, neither any history of beating was stated to the Doctor nor any such opinion was given by him. The complainant is highly qualified and was aware about her rights as well and even at the time of medical check up with the doctor, petitioner No.2 accompanied the complainant. Initially, a complaint was made to DCP, Panchkula which was referred to Women Cell, Sector 12, Panchkula. Subsequently, on filing a complaint under Section 156(3) CrPC, the present FIR was registered without waiting for any outcome of that complaint. Learned counsel also submits that there was difference between the complainant and her husband which was due to temperamental differences and inspite of making all efforts of settlement it could not be settled. Subsequently just to harass, the petitioners and the other family members, the complaint was made and on the basis of which FIR was registered. Learned counsel also submits that none of the reports of the ultra sonography remotely suggests that miscarriage took place because of physical assault which was by way of giving beating to the respondent No.2. Learned senior counsel also submits that as per allegations in the complaint, the brother of the complainant was also present and beatings were given in his presence but inspite of that she did not think it proper to go for any medical examination immediately after the alleged occurrence. The allegations in the complaint are that the pregnancy was terminated by taking four tablets of Misoform and the allegations leveled by the complainant appear to be contradictory. The allegation of taking four tablets of misoform is sufficient to demolish the case of the prosecution. Learned senior counsel also submits that one son of the petitioners has also been implicated on the allegations of attempt of rape and he was arrested and has been released on regular bail. Learned senior counsel also submits that Sections 420,468,471 IPC were also added later on after thought by the investigating agency only because of difference of dates on the letters issued by the doctor, whereas, doctor himself had admitted his signature on the letter. Learned counsel also submits that nothing is to be recovered from the petitioners and they are ready to join the investigation. In case any recovery is to be effected of the alleged dowry articles, they are ready to return the same and an electronic locker can be unlocked by the complainant herself as she was operating that locker.

The bail application has been opposed on the ground that the petitioners are not entitled for extraordinary concession of anticipatory bail on the ground of misrepresentation and concealment. Documents attached with the bail application moved before the Lower Court was forged as this letter was never issued by the Doctor. This fact was pointed out by the Public Prosecutor before the trial and Court took the notice of that and because of that reason those documents have not been attached with the present petition.

Learned counsel for the respondent also oppose the bail on the ground that the conduct of the family members reflects that other daughter in law was turned out from her matrimonial home. Learned State counsel also submits that although the petitioners have joined the investigation but they did not cooperate with the investigation and they are required for recovery of dowry articles.

Heard arguments of learned counsel for the parties and have also perused the contents of the FIR and other documents on the file.

Admittedly, marriage between the complainant and son of the petitioners was solemnized on 2.4.2012 and only within one month thereafter the differences between the parties arose. As per allegations in the FIR, the demand of dowry was there and the complainant was subjected to cruelty at the instance of the present petitioners and other accused persons. As per allegations, beatings were given to the complainant and due to which her pregnancy got terminated. At the time of filing anticipatory bail before the lower court, an interim order was passed in favour of the petitioners and they were directed to join the investigation. Although the petitioners joined the investigation but they did not cooperate with the investigation and dowry articles given at the time of marriage could not be recovered. Son of the petitioners who is husband of the complainant is still absconding. The allegation of attempt to commit rape is also there against other son of the petitioners who was arrested and was granted bail. As per case of the petitioners, it was a case of missed-abortion as the factum of beating was neither brought to the knowledge of the doctor nor any opinion has been given with regard to cause of abortion. Nothing can be concretely said regarding the cause of abortion. However, that can be ascertained by medical opinion only and it cannot be considered at this stage. At the time of considering the case of bail, only it is to be seen whether on the basis of allegations mentioned in the FIR, an offence is made out or not. It is to be presumed that in case the allegations in the FIR are to be correct on its face value, then still no offence is made out and then only the bail can be granted.

In the present case, specific allegations of demand of dowry and harassment are there. Allegations are also there that the abortion took place because of beatings given by the petitioners. It is not necessary that apparent sign of physical beating is there to connect the assault to the complainant which resulted into miscarriage and moreover it is a matter of evidence and the same cannot be considered, at this stage.

Moreover, it has also been brought to the notice of the Court that certain documents were attached with the petition filed before the lower Court at the time of filing the application for grant of anticipatory bail. As per opinion of the doctor, those documents were never issued by him. Two letters issued by Dr.S.S.Bakshi on 28.5.2010 and 29.5.2010 were inquired upon from the doctor and it was found that the report as mentioned in the letter dated 29.5.2010 was never issued because of this reason sections 420,468,471 IPC were also added. It has also been brought to the notice of the Court that the petitioners are interfering in the investigation and have also destroyed the substantial piece of evidence like video as well as photographs. When the Investigating Officer went to collect the photographs from the photographer who videographed the whole function and also took photographs, informed that all original data has been taken away by the petitioner. The conduct of the petitioners reflect from the statement made by one Neetu who was married to elder

son of the petitioners. The said statement was recorded under Section 161 CrPC which reflects the conduct and antecedents of the petitioners and co-accused. The said Neetu was also turned out from her matrimonial home.

It is settled proposition of law that a person who has not approached the Court with clean hands, does not deserve any indulgence of the Court. The Hon'ble Supreme Court in case Ramjas Foundation and another versus Union of India and others 2011 (1) RCR (Civil) 176 has held that a person who does not come to the Court with clean hands is not entitled to be heard on the merits and as such he/she is not entitled to any relief. That apart even if the allegations are to be assessed, the petitioners do not deserve the concession of anticipatory bail.

In view of the aforesaid discussion, the present petition being devoid of any merit is hereby dismissed.

However, any observation made hereinabove shall not be construed as an expression of opinion on the merits of the case.

December 04 ,2012
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(DAYA CHAUDHARY)
JUDGE