

Sharad @ Sharad Chandra and anr Vs. State

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Court : Rajasthan Jodhpur

Decided On : Feb-18-2014

Appellant : Sharad @ Sharad Chandra and anr

Respondent : State

Judgement :

[1].IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR
S.B.CRIMINAL MISC.BAIL APPLICATION NO.1595/2014 Sharad @ Sharad
Chandra & Anr.

versus State of Rajasthan Date of order :: 18.02.2014 HONBLE MS.JUSTICE
NIRMALJIT KAUR Mr.J.S.Choudhary, Sr.Adv.With Mr.Pradeep Choudhary,
Mr.Tarun Dhaka, counsel for the petitioners.Mr.Rajesh Panwar, Addl.

Advocate General with Mr.Chandra Sen Rathore, counsel for the State.

Mr.P.C.Solanki, counsel for the complainant.

<><><><> The present bail application has been filed under Section 439 of the
Cr.P.C.The petitioners are seeking bail in connection with CR No.122/2013,
P.S.Mahila Thana (West) Jodhpur for the offence under Sections 342/34, 354-
A/34, 370(4).376(2)(f) read with 120B/109, 376(D).506/34, 509/34 and 109/120B
of the IPC, Sections 23 of the Juvenile Justice (Care and Protection of Children)
Act, 2000 and Section 5(F)/6 read with 17, 5(G)/6 and 7/8 read with 17 of the
Protection of Children from sexual offences Act, 2012.

The accused petitioner Sharad @ Sharad Chandra is the Director of the Gurukul where the prosecutrix was pursuing her studies.

As per the allegation, the petitioner made arrangement for sending the prosecutrix to Asa Ram.

He called her to his office [2].and showed her the girl called Bhavya.

who was made to pretend that she was suffering from evil spirit and thus, convinced the prosecutrix that she too was suffering from the same and needed to see Asa Ram for treatment.

Whereas, Prakash is the personal cook of Asa Ram.

It was he, who called the prosecutrix and told her to sit outside the Kutia and gave her milk to drink on the asking of the Asa Ram.

It was alleged that Shilpi, Shiva and the present petitioners i.e.Sharad and Prakash conspired with each other to send the prosecutrix to Asa Ram and are responsible for what happened.

While praying for bail, learned counsel for the petitioners contended that the co-accused of the petitioners Sanchita Gupta @ Shilpi and Shiva @ Savaram have been released on bail vide order dated 10.02.2014 passed in S.B.Criminal Misc.

Bail Application Nos.8609/2013 and 8610/2013.

It is stated that the case of the petitioners is not any different and that there is no evidence available with the investigating agency to connect them with the alleged offence except the telephone calls between all the co-accused.

Learned counsel for the complainant while vehemently opposing the bail submitted that charges have been framed against the petitioners for an offence under Sections 342, 376, 354(A).506, 509/34 of the IPC and Section 23 of the Juvenile Justice (Care and Protection of Children) Act, 2000 and Section 8 of Protection of Children from Sexual Offences Act, 2012 with the help of Section 120-B IPC.

[3].Reliance was placed on the judgment rendered by the Apex Court in the case of C.B.I.Vs.V.Vijay Sai Reddy in Criminal Appeal No.729 of 2013, decided on 9.5.2013 wherein the Apex Court cancelled the bail granted to the respondents who had played an active role as an conspirator and were liable for the offence under Section 120-B read with Sections 420, 468 and 471 IPC and Section 9 of the PC Act.

Heard.

The judgment relied on by the learned counsel for the complainant i.e.C.B.I.versus Vijay Sai Reddy (supra) was an order cancelling bail wherein the trial court had granted bail inspite of the fact that the investigation was still going on and it was in those circumstances that the Court thought it appropriate to cancel the bail by taking note of this fact.

Para 15, 18 and 32 of the judgment read as under:- 15) According to the CBI, the investigation is still in progress in other separate and distinct offences.

He also pointed out that the said conclusion is totally contrary to the record.

By pointing out various facts and figures, he asserted that A-2 is an active member of the criminal conspiracy and releasing him at the stage of investigation would result in miscarriage of justice as the role played by him in the conspiracy is serious and grave in nature.

The main grievance of the CBI is that when there was sufficient evidence on record and investigation is yet to be completed in many matters.grant of bail would defeat the proper investigation in the case.

18.

It is also brought to our notice that investigation relating to M/s Sandur Power Company is in progress which involves investigation in foreign countries in which Y.S.Jaganmohan Reddy (A-1) was the Director.

As per the investigation, respondent herein (A-2) was the main person, who facilitated formation of M/s Sandur Power Company Ltd.There is also [4].allegation

that Sandur Power Company received huge amounts from two Mauritius based Companies and the source of those monies is being investigated speedily and efforts to trace the source are being done expeditiously.

It is also brought to our notice that Letter of Rogatories have been sent to six foreign countries and they have furnished the status of LRs.³²) Taking note of all the aspects discussed above, without expressing any opinion on the merits, we set aside both the orders of the Special Judge and the High Court granting bail to A-2 and allow the appeal filed by the CBI with a direction to complete all the investigation relating to the remaining three charge sheets and file appropriate report before the trial Court within a period of four months from today.

Thereafter, the respondent herein is free to renew his prayer for bail before the trial Court and if any such petition is filed, the trial Court is free to consider the prayer for bail independently on its own merits without being influenced by the present appeal.

During the couRs.of hearing, it is brought to our notice that the marriage of the daughter of the respondent has been fixed for 26.05.2013.

Taking note of the said aspect, we direct the respondent herein to surrender on or before 5-6-2013 before the Special Court for being sent to the custody.

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It is apparent from the above that while cancelling the bail, liberty was granted to the accused-respondent to renew his prayer for bail before the trial court after completion of the investigation by the CBI.

In the present case, investigation is complete.

Challan has already been filed.

In fact, charges have also been framed.

The only evidence against the present petitioners and Co. accused Shilpi and Shiva is the call details between all the accused.

There is no text of the call details available on record.

Moreover, as also observed by this Court in the case of Shilpi and Shiva, the question as to whether these accused had knowledge about the intention of Asa Ram is a matter to be proved during the [5].trial.

Both the petitioners are employee of Asa Ram and neither of them are in a position to either influence or tamper with the evidence or threat the complainant in any manner unlike the main accused Asa Ram.

There is nothing to distinguish the case of the petitioners from that of the co-accused i.e.Shiva @ Sava Ram and Sanchita Gupta @ Shilpi.

who have been enlarged on bail vide a detailed order dated 10.02.2014.

In view of the above, this Court deems it proper to release the petitioners on bail.

Accordingly, both the above mentioned applications under Section 439 Cr.P.C.are allowed and it is ordered that the accused- petitioners (1) Sharad @ Sharad Chandra S/o Jayant Rao (2) Prakash S/o Suresh Divedi shall be enlarged on bail in FIR No.122/2013, PS.

Mahila Thana, Jodhpur (West) provided each of them furnishes a personal bond in the sum of Rs.2,00,000/- with two solvent sureties of Rs.1,00,000/- each to the satisfaction of the learned trial Judge with the condition that they will surrender their passports with an undertaking that they will not leave India without prior permission of the Court, they will be present before the trial court on every date of hearing, will not tamper with the evidence and will not misuse the concession of bail in any manner.

(NIRMALJIT KAUR).J.

Praveen

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