

Ram Singh Baliyan Vs. State and anr

Ram Singh Baliyan Vs. State and anr

SooperKanoon Citation : sooperkanoon.com/1136032

Court : Delhi

Decided On : Mar-28-2014

Judge : Veena Birbal

Appellant : Ram Singh Baliyan

Respondent : State and anr

Advocate for Def. : Ms. Jasbir Kaur, Mr. Ajay Verma

Advocate for Pet/Ap. : Mr. Sunil K. Mittal, Mr. Kshitij Mittal, Mr. Anshul Mittal, Ms. Vaishali Mittal

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Date of decision: March 28, 2014 + CRL.M.C. 472/2014 RAM SINGH BALIYAN Petitioner Through: Mr. Sunil K. Mittal with Mr. Kshitij Mittal, Mr. Anshul Mittal, Ms. Vaishali Mittal, Advocates versus STATE & ANR. Respondents Through: Ms. Jasbir Kaur, APP. Mr. Ajay Verma, Advocate for R-2. I.O. SI Madhurendra Kumar, DIU/South Distt., Malviya Nagar. CORAM: HON'BLE MS. JUSTICE VEENA BIRBAL VEENA BIRBAL, J.

1. This is a petition under Section 439(2) of Cr.P.C. filed on behalf of the petitioner/complainant of FIR No.548/2013, u/s 307/308/34/120-B of IPC, P.S. Malviya Nagar wherein prayer is made for cancellation of bail granted to the respondent No.2 by this Court vide order dated 21.01.2014.

2. The allegations against the respondent No.2/accused are that on 24.10.2013 he had mercilessly beaten the petitioner/complainant along with other accused persons whereupon the petitioner was taken to AIIMS Trauma Centre by PCR. Thereupon, DD No.107B dated 24.10.2013, P.S. Malviya Nagar was recorded which was handed over to SI Manish. Thereupon, SI Manish along with Constable Aashish had gone to the spot where they came to know that the injured had been taken to AIIMS Trauma Centre. Constable Aashish was left at the spot and SI Manish left for the Trauma Centre where present petitioner was found admitted. He obtained the MLC of the injured/petitioner and the injured/petitioner was declared fit for making statement. However, the injured did not make any statement and considering the circumstances, FIR under Section 308/34 IPC was registered at P.S. Malviya Nagar on 25.10.2013. The two co-accused persons, namely, Rajbir and Arshad were arrested in connection with aforesaid FIR on 01.11.2013. The other two co-accused persons i.e. the respondent No.2 and one Pankaj @ Chiku were arrested on 04.11.2013. It is stated that the petitioner could not make the statement earlier as he was under heavy sedatives. According to the petitioner, the police had met him for the first time at his residence on 25.10.2013 and recorded his statement. Even at that time, the petitioner was under the influence of heavy sedatives. After the discharge from AIIMS hospital, he got admitted in Sita Ram Bhartia Hospital on 30.10.2013 and had to undergo two surgeries on 01.11.2013 and 06.11.2013 and remained admitted there upto 08.11.2013. It is stated that the supplementary statement of the petitioner was recorded on 18.11.2013 and on the basis of medical evidence and CT records collected by the police, Section 307 IPC was also added in the FIR.

3. Learned counsel for the petitioner has submitted that the respondent No.2 has obtained the bail order from this court by concealing material facts. It is contended that in the bail application, the alleged offence has been mentioned as under Section 308/34 IPC whereas the investigation was being conducted under Section 307/120B/34 IPC and the said fact was within the knowledge of respondent No.2 and same has been concealed from this Court deliberately. It is also submitted that in the bail application, it has been mentioned that co-accused Dinesh Kundra was granted bail by learned Additional Sessions Judge on 16.11.2013 whereas bail granted to him was cancelled by the learned Additional Sessions Judge on

29.11.2013. It is further submitted that while arguing the bail application it was submitted on behalf of the respondent No.2 that there is no involvement of respondent No.2/accused in any other case. Even the said fact was wrongly mentioned and the respondent No.2 is involved in three other criminal cases. It is submitted that as there is concealment of material facts before this Court, as such bail granted to the respondent No.2 be cancelled.

4. The reply has been filed by the respondent No.2/accused wherein it is stated that there is no concealment of material facts from this Court as is alleged. It is submitted that earlier the FIR No.548/2013 was registered under Section 308 IPC wherein the respondent No.2 was arrested and was in judicial custody since 05.11.2013. The respondent No.2 had no knowledge of subsequent change in the Section in the FIR. It is further submitted that status report was placed before this Court wherein it was stated that on account of supplementary statement, subsequently given by the petitioner/complainant and after discussion with the senior officers, Section 308 IPC was converted into Section 307 IPC. It is denied that respondent No.2 is involved in any other criminal case of similar nature as is alleged. It is stated that it is not a fit case for cancellation of bail.

5. The State has also filed a reply wherein it is stated that initially a case was registered under Section 308/34 IPC and Section 120B IPC was added later on and when petitioner/complainant gave third statement on 18.11.2013, after 24 days of incident, Section 308 was converted into Section 307 IPC. It is stated in the reply, that the status report was submitted in the court. However, it appears that due to some inadvertence, the Court could not take notice of the facts as submitted in the status report. It is further stated that even the hearing of the bail application was duly communicated to the petitioner/complainant.

6. I have considered the submissions made and perused the material on record.

7. The file of Bail Application No.102/2014 wherein the respondent No.2 was granted bail vide order dated 21.1.2014 has also been called. The same is also perused.

8. The bail order dated 21.01.2014 passed in favour of respondent No.2 is as under:

The alleged incident is of 24.10.2013. The allegations are under Section 308/34 IPC. The injured was declared fit for making statement on that very day at the hospital, however, he did not make the statement and gave the statement on the next date. MLC shows bruises over the body and there is one laceration wound of 3x1 cm over B/L Legs shin. The injuries have been opined as grievous with blunt weapon. The coaccused Dinesh Kundra has already been granted anticipatory bail by the learned Sessions Court. The petitioner is in custody since 04.11.2013. There are no allegations that the petitioner is involved in any other case. The dispute is about one flat between co-accused Dinesh Kundra and the petitioner and even as per the statement of victim Dinesh Kundra was present at the time of incident and he has been given anticipatory bail by the learned Sessions Court. Considering the totality of facts and circumstances, the petitioner is granted bail on furnishing bail bond of Rs.20,000/with one surety of like amount to the satisfaction of concerned trial court. In case the petitioner tries to contact the witnesses in any manner or threaten them, the State will be at liberty to apply for cancellation of bail.

9. The bail application filed by the respondent No.2 i.e. Bail Application No.102/2014 mentions as under:

FIR No.548 of 2013, under Section 308/34 IPC, P.S. Malviya Nagar.

10. The FIR annexed with the said petition is the initial FIR which was registered under Section 308/34 IPC. There is also an order dated 16.11.2013 in respect of co-accused Dinesh Kundra who has been granted anticipatory bail by the learned Sessions Court wherein also the offence mentioned is Section 308/34 IPC and Section 120B IPC. Perusal of the said file shows that no status report was filed by the State while granting bail to the respondent No.2. The counsel for the respondent No.2 had made submissions for the grant of bail for the allegations under Section 308/34 IPC as is evident from the order dated 21.1.2014 and material placed on record by respondent no.2. The presence of learned APP and I.O. SI Madhurendra Kumar is also recorded in the aforesaid order. Nobody

pointed out about the subsequent conversion of offence in the FIR from section 308 IPC to 307 IPC as is contended today by the learned counsel for the petitioner. The bail application was disposed of on 21.01.2014 whereas Section 307 IPC was added on 18.11.2013. However, the material on record is silent about this.

11. Learned counsel for the respondent No.2 has submitted that the petitioner was in custody and was not aware that Section 308 IPC has been converted into Section 307 IPC. It is further submitted that the status report was filed wherein it was stated that on account of supplementary statement, the FIR is converted into under Section 307 IPC and court has granted bail considering the entire facts and circumstances.

12. Learned APP has very fairly conceded that the status report dated 21.1.2014 was not filed in the court as the same was handed over to her by the I.O. a little late on that date i.e., 21.1.2014 and she had not gone through the same, accordingly, same was not filed.

13. Though the stand of learned APP is that the status report dated 21.1.2014 was not filed, however, after the disposal of the bail application, the State could have moved an application informing the true facts which has not been done in this case. Even respondent no.2 of his own did not come to the court with the true facts at subsequent stage.

14. Perusal of file shows that anticipatory bail granted to co-accused Dinesh Kundra has also been cancelled by the Learned District & Sessions Judge, Patiala House Courts, on 29.11.2013. Even the said fact was not informed to the court while hearing the bail application. Further, the respondent No.2 was also involved in three other criminal cases i.e., FIR no.08/07 u/s 279/337 IPC P.S.K.M.Pur; FIR no.276/07 u/s 323/341/34 IPC P.S.K.M.Pur and FIR no.273/11 u/s 323/341/34 IPC P.S.K.M.Pur. In the first case, he has been convicted while in next two cases, he has been acquitted. Nothing was stated in this regard in the bail application on behalf of respondent no.2.

15. The above discussion shows that respondent no.2 has concealed material facts from the court at the time of hearing of bail application. Accordingly, the order dated 21.1.2014 by which respondent no.2 has been granted bail stands cancelled. In any event, the bail was granted only under Section 308 IPC which has already been converted under Section 307/120B/34 IPC. Accordingly, the said order also becomes ineffective. The present petition stands disposed of accordingly. VEENA BIRBAL, J MARCH28 2014 srb

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com