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Court : Karnataka Dharwad

Decided On : Apr-09-2015

Judge : G. Narendar

Appeal No. : Criminal Petition No. 100268 of 2015

Appellant : Moulali

Respondent : The State of Karnataka

Judgement :

(Prayer: This Criminal Petition Is Filed U/S 439 Of Cr.P.C. Seeking To Enlarge The Petitioner On Regular Bail In Connection With Bagalkot Rural P.S. Crime No.8/2015 Which Is Registered For The Offences P/U/S 143, 147, 304-B R/W 149 Of Ipc And U/S 3 and 4 Of Dp Act.)

1. The present petition is filed under Section 439 of Cr.P.C. praying to enlarge the petitioner on regular bail in Crime No.8/2015 registered by the respondent police for the offences punishable under Sections 143, 147 and 304B read with Section 149 of I.P.C. and under Sections 3 and 4 of the Dowry Prohibition Act.

2. The facts succinctly stated are that one Mohammed Sadiq by the complaint dated 18.01.2015 had alleged that he had given his daughter, by name Rubina Begum, in marriage to the petitioner herein by name Moulali S/o. Abdulsab Nadaf, who was employed with Karnataka Electricity Board and that the marriage was solemnised on 14.12.2008. He further states that out of the marriage, his daughter

had borne two children, one aged about two years and the second child is aged about nine months. The complainant has narrated that after the marriage the petitioner, his mother and others started illtreating the deceased Rubina Begum by making demands upon her to bring dowry. His specific allegation is that the accused No.1 i.e., the petitioner herein had demanded for a sum of Rs.5,00,000/- in order to enable him to construct a house and that on refusal the deceased Rubina Begum was illtreated and tortured leading to the deceased leaving the matrimonial house.

3. The complainant has alleged that subsequently on the intervention of the Jamaat (congregation of elders), the issue was resolved and the petitioner was advised not to illtreat the deceased under the guise of dowry. It is also stated by the complainant that petitioner himself had approached him and requested that his wife (the deceased) be sent along with him to resume their marital life.

4. The complaint further discloses that the petitioner had telephoned the complainant at about 9.30 a.m. on 18.01.2015 stating that his daughter had committed suicide in the bed room by hanging herself to the slab hook by using a saree. The complainant has immediately lodged the present complaint and the respondent police have taken the accused into custody and he has been in custody since the said date. The mother of the petitioner was also arrested and remanded to judicial custody. The petitioner and his mother had moved the court below and the court below by order dated 04.02.2015 was pleased to release the mother, who is aged about 62 years, but has rejected prayer of the petitioner for similar relief. Aggrieved, the petitioner is before this Court.

5. Heard the learned counsel for the petitioner and the learned H.C.G.P.

6. It is submitted on behalf of the petitioner that he has a blemishless career and he is a Government servant employed with the Karnataka Electricity Board and there are no known antecedents and he hails from a respectable family.

7. The learned counsel would also point out the very fact that the petitioner has by himself intimated the complainant about the death, would go to demonstrate the character and conduct of the petitioner as he never intended to abscond or evade

the judicial process or any investigation. He would also impress upon this Court the fact that the petitioner cannot evade himself from the clutches of the law for the simple reason that he is an employee of a statutory authority and that is his only source of livelihood and if he were to run away he would permanently lose the source of livelihood. The learned counsel would also point out the fact that he is the father of two young children aged two years and nine months respectively and the said children are now in the custody of his mother, who is aged about 63 years.

8. The learned counsel would submit that the incarceration of the petitioner has seriously disrupted the life of not only the petitioner, but also his aged parent, who are dependant upon him and due to the illegal incarceration the source of livelihood has also been disrupted leading to severe financial constraints. The counsel would further submit that the court below has not considered any of these grounds, but simply been carried away by the bald allegation that he demanded a sum of Rs.5,00,000/- to construct a house which is totally false as he would submit that it is an undisputed fact that the accused is living in his own house and there was no necessity for him to demand money for the purpose of constructing a house and though the said fact was placed before the court below it has simply brushed it aside and without assigning any reasoning for not considering the same. The said allegation has been concocted only for the purpose of having the petitioners detained and sent behind bars.

9. He further submits that as per the medical report the cause of death is due to hanging and that the deceased had committed suicide and the post mortem report clearly shows that there are no injury marks or other wounds on the body and it would go to demonstrate that the deceased has hanged herself and there has been no external force. Under such circumstances, the petitioner had to be enlarged on bail as otherwise it would seriously affect the upbringing of the two minor children.

10. Per contra, the learned H.C.G.P. would concede that a reading of the provisional medical opinion, it only discloses the ligature mark around the neck and does not disclose any other injury marks on the body and he would submit

that the Investigating Authority is prima facie of the opinion that it is a case of suicide but, he would reiterate that the allegations in the complaint and would canvass that but for the illtreatment the deceased would not have resorted to such an extreme act.

11. On the basis of the above material and contentions, the question that falls for consideration is -

"Whether the petitioner is entitled for the grant of relief as prayed in the present petition? "

12. As seen above, the perusal of the complaint, does not disclose any specific allegation and the allegations against the accused are bald and apart from demonstrating that there was some discord in the family life of the complainant's daughter and the accused, it does not disclose any instance where the deceased has been subjected to any bodily harm nor is there any allegation that she was physically assaulted. The only specific allegation on which the trial Court has concluded to reject the relief prayed by the petitioner is the demand for Rs.5,00,000/- to construct a house. As per the contention of the petitioner, the petitioner is residing in his own house. That being so, the allegation that he demanded money for constructing the house has to be taken with pinch of salt. The complainant himself has further stated that this petitioner had personally requested him to send back the deceased to the matrimonial home to restore their matrimonial life. This only goes to show that the petitioner never intended to get rid of his wife. The fact that two children have been born out of wedlock also shows that the deceased and the petitioner were living together as husband and wife. The circumstance which led the deceased to commit suicide needs to be investigated and substantiated which is a time consuming process. As stated by the petitioner's counsel, the petitioner is an employee under a statutory authority and his further detention may lead to him loosing the source of life and it would further disrupt the family life and in turn affect the upbringing of the two minor children and the cause of the aged parents also has to be taken into account.

13. Learned HCGP has not placed any material which is clinching in nature. The medical examination of the deceased also does not disclose any severe injury

mark except the ligature which is a result of the hanging.

14. In that view of the matter, this Court is of the considered opinion that the petitioner deserves to be enlarged on bail. Accordingly, the petition is allowed. The petitioner is enlarged on bail, subject to -

i) Petitioner executing a self bond for a sum of Rs.1,00,000/- and also furnishing two sureties for a likesum to the satisfaction of the jurisdictional trial Court.

ii) The petitioner shall not tamper with the witnesses or evidence.

iii) The petitioner shall not try to influence the complainant or others.

iv) The petitioner shall not leave the jurisdiction of this Court without the prior permission of the trial Court.

v) The petitioner shall attend the Court on all hearing dates.

The above criminal petition is ordered accordingly.

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