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SooperKanoon Citation : sooperkanoon.com/138762

Court : Patna

Decided On : Apr-09-2008

Judge : Samarendra Pratap Singh, J.

Acts : Indian Penal Code (IPC) - Sections 34, 307, 323, 324, 325, 326 and 341;
Code of Criminal Procedure (CrPC) - Sections 437 and 437(1)

Appeal No. : Cr. Misc. No. 23297 of 2007

Appellant : Arun Kumar

Respondent : State of Bihar and ors.

Disposition : Petition allowed

Judgement :

Samarendra Pratap Singh, J.

1. Petitioner prays for cancellation of bail to opp.parties 2, 3 and 4, namely, Ram Pravesh Singh, Dhananjay Singh and Rajia Singh allowed to them by the Chief Judicial Magistrate, Aurangabad under order dated 12.4.2007 passed in Obra P.S. Case No. 16 of 2007 lodged for offences under Sections 307/34, 324, 323, 341 of the Penal Code.

2. Informant who is petitioner before this Court had instituted the aforesaid PS case on 7.3.2007 alleging that a dispute arose with opp.party No. 2 for burning

Holika which was opposed by the petitioner. Thereafter opp.party No. 2 Ram Pravesh Singh went back to his house and returned armed with his brothers/opp party Nos. 3 and 4 at the place of Holika Dahan and they started assaulting the petitioner with Farsa and lathi. Ram Parvesh Singh was instigating them to attack. The informant who is petitioner here became unconscious, whereafter the opp parties fled away thinking him to be dead. The petitioner was taken to the Bose clinic at Dehri on Sone where he gave statement on 7.3.2007 on regaining consciousness.

3. Learned Counsel for the petitioner submits that on account of a dispute over putting fire in Holika Dahan an altercation took place with opp.party No. 2, whereafter opp.party No. 3, namely, Dhananjay Singh assaulted him with Farsa on his head and Rajia Singh assaulted him with Lathi causing serious head injuries with fracture for which he remained hospitalized from 3.3.2007 to 21.3.2007 and when his condition did not improve he was brought to Dr. A.K. Agrawal, Head of the Department, Neurosurgery, PMCH, Patna where CT Scan was done which indicated that petitioner got '(1) depressed fracture of the Top parietal bone close to midline indurating the adjacent cerebral cortex of both sides (2) Thin layer of right frontal epidural collection', injuries as mentioned in his medical examination report. It is further submitted that the injury also had the effect on eye sight of the petitioner for which he had to rush to the Shankar Netralaya (Eye Hospital), Chennai in a quick succession. Learned Counsel also submits that after investigation police submitted charge sheet under Section 307 of the penal code and the court also took cognizance of the offence under the same section.

4. It is submitted by opp.parties that occurrence took place on 3.3.2007 and FIR was lodged after delay of four days on 7.3.2007 without any cogent explanation. Furthermore, the injured petitioner was not taken to nearby Government hospitals, at Obra or Aurangabad rather he was carried to a private clinic at Dehri On Sone and a collusive grievous injury report was obtained though the injury sustained was simple and ordinary as only minor scuffle took place at time of Holika Dahan. It is also submitted that after being released on bail on 12.4.2007 he has not misused the conditions of bail, as such, this privilege may be extended in his favour.

5. He submits that Section 437(1) of other Cr.P.C. imposes embargo on the power of the Chief Judicial Magistrate to grant bail in a case where there is a reasonable ground for believing that accused has been guilty of offence punishable with death or imprisonment of life. He submits that there is no legal bar on the power of the Magistrate to grant bail in appropriate case other than the one which is punishable by death or imprisonment for life. Finally he submits that consideration for grant of bail and cancellation of the same is different. Learned CJM, Aurangabad granted bail to the opp.parties including opp.party No. 3 on the date of surrender on the ground that there has been delay of three days in lodging of the First Information Report and the medical report of the injured is not of a government doctor but of a private doctor and the FIR do not contain any specific allegation against any of the accused persons.

6. It would appear from the FIR that the informant became unconscious on 3.3.2007 on account of lathi and Farsa injury on his head, and, when he retained consciousness on 7.3.2007 he gave his fard beyan, as such, it cannot be said that the delay has not been prima facie explained at this stage. It has come during investigation that opp.party No. 3 assaulted the injured petitioner with Farsa on his head causing grievous injury. A medical report cannot be brushed aside simply on the ground that it is of a private clinic/hospital or doctor, and particularly when the medical report of the private clinic stood corroborated by a noted doctor, namely, Dr A.K. Agrawal, head of the Neurosurgery, PMCH. In this case even no material has been brought on record to doubt the reliability of the report of private doctor. This Court finds that the injured even went up to the Shankar Netralaya, Chennai as there were some effects of the injury on the other parts of the organs of the body including eye sight.

7. Having set out the principles and norms in regard of grant of bail, the issue that is to be examined here is whether magistrate was justified in granting bail to opp.party No. 3 thus enabling him to go scot free without facing a jail for a day in a case of causing grievous hurt on head.

8. The power of a Magistrate to grant bail in a case of non bailable offence is enumerated in chapter XXXIII of the Code of Criminal Procedure (hereinafter

referred to as the Code). Section 437(1)(i) of the Code mandates that if an accused is brought before a court other than the High Court or the Court of Session such person should not be released on bail 'if there appears reasonable ground for believing that he has been guilty of an offence punishable with death or imprisonment for life'.

9. However, exception is provided in proviso which says that in appropriate case the bar provided under Section 437(1)(i) of the Code may not apply to person under 16 years of age or to a woman or one who is sick or infirm. In other words, the statutes specifically does not provide any legal bar for a magistrate to consider an application for grant of bail to a person who is arrested for an offence which is not punishable by death or live imprisonment.

10. The Apex court in the case of Prahlaad Singh Bharti v. NCT, Delhi and Anr. reported in : 2001 CriLJ1730 while dealing with the power of a magistrate to grant bail in a case of non bailable offence punishable with death or imprisonment of life observed as follows:

Even in a case where any magistrate opts to make an adventure of exercising the powers under Section 437 of the code in respect of a person who is suspected of the commission of such an offence, arrested and detained in that connection, such magistrate has to specifically negate the existence of reasonable ground for believing that such an accused is guilty of an offence punishable with the sentence of death or imprisonment for life.

11. Now the relevant aspect is whether a magistrate should exercise his jurisdiction in case of an offence under Section 307 of the penal code which is exclusively triable by the court of sessions even though it may not be carrying punishment of death or life imprisonment.

11. the answer to the above question could be also found in the case cited above. The Hon'ble Supreme Court while examining the issue observed that where an offence is exclusively triable by the court of session, it would be proper and appropriate that in such a case the magistrate directs the accused person to approach the higher courts for the purpose of getting relief of bail.

12. It would appear from order of Hon'ble Apex court that the words 'reasonable ground for believing' that such person has been guilty of an offence under Section 307 of the penal code exclusively triable by court of session would relate to satisfaction of the court as to whether there is a genuine case against the accused and the prosecution will be able to produce prima facie evidence in support of charge.

13. A magistrate may exercise his jurisdiction of grant of bail in a case under Section 307 of the penal code or in respect of offence which are exclusively triable by court of session only when it can specifically negate the existence of reasonable ground for believing that there is no genuine case against the accused in respect of it and prosecution will not be able to produce prima facie evidence in support of charge for such offence, otherwise it would not be proper for it to exercise jurisdiction relating to grant of bail.

14. The aforesaid proposition of law could be illustrated by an example. If a person X assaults another person with a lethal weapon on head and Y assaults below the leg (knee) with a stick or a knife. As per definition of Section 307 of the penal code the offence as against X could be one of attempt to commit murder as the person attacking with lethal weapon on head would be having knowledge that such act would cause death. In such case (identified by accused X) the magistrate should refrain from exercising power of grant of bail as there is reasonable ground for believing that the accused is prima facie guilty of an offence under Section 307 of the penal code which is exclusively triable by the court of session. However as far as assault by Y is concerned the same is aimed below the knee by lathi or knife. In such a situation it cannot be said that person Y would be having intention to cause death. The offence as relating to accused Y may come under Section 325 or 326 of the penal code as the case may be.

15. It is well settled that bail may be cancelled even on merits if a magistrate grants bail in a heinous crime or in a case which can be shocking to the conscience or where it had ignored relevant materials or has exceeded his jurisdiction etc. The legislature has provided hierarchy of courts, for exercising power in relation to grant of bail for accusations of different magnitudes ranging

from punishment of fine upto death. This is the reason legislature has restricted the power of magisterial court in respect of grant of bail in grievous case of non bailable offences.

16. In the instant case, though there is general allegation in the FIR that all the accused assaulted the informant with lathi and Garasa but it has come in course of investigation that opp.party No. 3 gave farsa blow on the head of the informant on account of which he remained unconscious and was hospitalized in Bose clinic in a private hospital at Dehri On Sone. The Medical report though of a private clinic stood corroborated by a doctor who was head of the department, Neuro surgery, PMCH. They found the injury to be on the head and to be grievous in nature being caused by sharp cut weapon.

17. In my view, there was reasonable ground for believing that opp.party No. 3, namely, Dhananjay Singh prima facie appears guilty of an offence punishable under Section 307 of the penal code which is exclusively triable by the court of session. As such, this Court finds that the learned magistrate erred in granting bail to opp party No. 3 and thus the order granting bail by the magistrate to opp.party No. 3 dated 12.4.2007 is set aside with liberty to him to move for bail afresh. With the aforesaid observations and directions, this petition is allowed to the extent indicated above.