Madhukar Deorao Kulkarni Vs. State of Maharashtra and 4 ors.

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Court : Mumbai

Decided On : Aug-18-2001

Reported in : 2001ALLMR(Cri)2050; I(2002)DMC769

Judge : R.K. Batta, J.

Acts : Code of Criminal Procedure (CrPC) , 1973 - Sections 439(2); Indian Penal Code (IPC), 1860 - Sections 34 and 498A

Appeal No. : Criminal Application No. 367 of 2001

Appellant : Madhukar Deorao Kulkarni

Respondent : State of Maharashtra and 4 ors.

Disposition : Application dismissed

Judgement :

ORDER

R.K. Batta, J.

1. The applicant seeks cancellation of anticipatory bail and bail granted to respondent Nos. 2 to 4, by the Additional Sessions Judge, Buldana. The respondent Nos. 2 to 4, apprehending arrest sought anticipatory bail for offence under Section 498-A r/w Section 34 of I.P.C. and interim bail was granted to them by the Additional Sessions Judge, Buldana vide order dated 1.12.2000. On 2.12.2000, the respondent Nos. 2 to 4 filed an application that as the wife of respondent No. 2 had expired, there was every likelihood of adding Sections 302 and 306 of the I.P.C. by the police and, as such, the interim bail be granted in respect of the said offences. The Additional Sessions Judge by order dated 2.12.2000, directed that-even if new sections are added, in connection with the death of the wife of respondent No. 2, the applicant shall be released on bail in the event of arrest as per the order dated 1.12.2000. Subsequently, by order dated 8.12.2000, the anticipatory bail was confirmed and this is one of the orders, in relation to which application for cancellation of bail has been filed. Thereafter, on 5.2.2001, regular bail was granted and this order also is subject matter of application for cancellation of bail.

2. The learned Advocate Mr. Brahme argued before me that both the orders dated 8.12.2000 as also order dated 5.2.2001, show that there is no application of mind while granting bail. The said finding do not disclose reasons for exercise of discretion in favour of the respondent Nos. 2 to 4 and that the Additional Sessions Judge, Buldana has rather shown a very casual approach in respect of the offence of serious nature. It may also be mentioned here that the appellant had filed an application for cancellation of bail before the Additional Sessions Judge, Buldana which was rejected vide order dated 28.2.2001 and according to the learned Advocate for the applicant, even in this order no reasons are given as to why the learned Additional Sessions Judge had come to the conclusion that there was no case for cancellation of bail. According to the learned Advocate for the applicant, the death had taken place within 7 years of marriage and there is a

presumption under Section 113 of the Indian Evidence Act; that in the second dying declaration the deceased has stated as to how kerosene was poured over her and she was burnt. In this dying declaration she has explained the circumstances under which the first dying declaration was given by the deceased. It is further pointed out that in addition to the second dying declaration, there are statements of the applicant and the members of his family to the effect that there was dowry demand on account of which the deceased was being constantly harassed and ill-treated and ultimately burnt to death. Therefore, the learned Advocate for the applicant contends that the anticipatory bail as well as bail granted to the respondent Nos. 2 to 4 be cancelled. The learned Advocate for the applicant has placed reliance on a number of judgments, namely, Samunder Singh v. State of Rajasthan and Ors., : 1987CriLJ705 ; Bulabai v. Shankar Barkaji 1999 (2) Mh. LJ 227; Say Gaud v. State of Maharashtra, 2000 (4) Mh. LJ 840; and Puran v. Rambilas and Anr. : 2001CriLJ2566 .

3. The learned Advocate for the respondent Nos. 2 to 4, urged before me that even in the F.I.R., which was lodged on 2.12.2000, the applicant has not stated that the deceased was burnt by her in-laws and on the contrary it is stated that the deceased got her burnt by stove. It is next urged by the learned Advocate for the respondent Nos. 2 to 4 that though in notice dated 5.2.1997, given by the deceased to the respondent No. 2, the allegations of demand were in relation to Rs. 5,000/- or T.V. and Godrej Almirah, on account which there was allegation of beating and ill-treatment, yet, in the F.I.R. and the statements of witnesses, the demand is stated to be of Rs. 30,000/- for purchasing trax. The learned Advocate for the respondent Nos. 2 to 4 further submitted that prior to 2.12,2000, there was nothing to show ill-treatment or demand; there are no independent witnesses in the matter; that the deceased in her first dying declaration recorded by the Executive Magistrate had stated that her saree caught fire on account of inflated flame of the stove and that her husband had made efforts to put out the flames. After placing reliance on Bhagirath Singh Jadeja v. State of Gujarat, : 1984CriLJ160 ; Joaquim Mann v. State 1973 Cri. LJ 1876; Dattu Thakye Patil v. State of Maharashtra 1980 Mh. LJ 522; and Dhanu Laxmi Reddy v. State of A.P. 3 (1999) CCR 190 (SC): 2 (1999) DMC 371 (SC): 7 (1999) SLT 106:1999 (4) Crimes 90, it is urged that no case for cancellation of bail has been made out.

4. The law on question of cancellation of bail is now quite well settled. The Apex Court in Puran v. Ramvilas (supra), has laid down that very cogent and overwhelming circumstances are necessary for an order directing cancellation of bail already granted and it has been held that generally speaking, the grounds for cancellation broadly are interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of concession granted to the accused in any manner. The Apex Court has noted that it has been clarified by the Apex Court itself that these instances are merely illustrative and not exhaustive. It is further pointed out that one such ground for cancellation of bail would be where ignoring material and evidence on record a perverse order granting bail is passed in a heinous crime and that too without giving reasons. According to the Apex Court, such order would be against the principle of law and interest of justice would also require that such perverse order be set aside and bail be cancelled. The Apex Court has also noted that it must be remembered that such offences are on the rise and have a very serious impact on the society. Therefore, an arbitrary and wrong exercise of discretion by the Trial Court has to be corrected.

5. The learned Advocate for the applicant urged before me that in this case, while granting anticipatory bail as also regular bail, the Trial Court has not given any reason for exercise of discretion in favour of respondent Nos. 2 to 4 and that it is a case of arbitrary and wrong exercise of discretion by the Trial Court as a result of which the bail is required to be cancelled.

6. The orders passed by the Additional Sessions Judge on 8.12.2000 and 5.2.2001, are no doubt cryptic and suffer from the vice of no reasons being disclosed for the exercise of discretion in favour of the respondent Nos. 2 to 4. Nevertheless, it is necessary to examine the material on record in order to find out as to whether the material on record discloses whether the order passed by the Trial Court suffers from the vice of perversity.

7. The incident in question is stated to have taken place on 1.12.2000 at about 6.00 a.m., in which the

deceased who is the wife of respondent No. 2 is said to have suffered 100% burns. The respondent No. 3 is the mother-in-law of the deceased and respondent No. 4 is the brother-in-law of the deceased. The deceased was removed to the hospital where her dying declaration was recorded by the Executive Magistrate at about 9.45 a.m. after completing necessary formalities of examination by Doctor and certificate by concerned Doctor that the patient is conscious oriented and fit for recording the statement and in this dying declaration, she has stated that she was married about 4 years ago; that she was warming up water at about 6.00 a.m. and at that time the flame of the stove suddenly got inflamed on account of which her saree caught fire and she shouted, upon which her husband made efforts to save her and that she had no complaints against any one. The applicant alleges that this dying declaration was given by the deceased under pressure of her in-laws, as a result of which he had requested for recording of another dying declaration which was recorded at 2.10 p.m. on the same day after complying with necessary formalities including examination by Doctor and certificate that the patient is conscious oriented and fit for giving statement. In this statement, she stated that at about 6.00 a.m. in the morning, she was to burn a stove for heating water. Her mother-in-law poured kerosene oil on her body and saree and, thereafter, she ignited a match stick and threw it on her body. The incident took place in the kitchen and her mother-in-law went into the drawing room. She cried loudly upon which her brother-in-law came there and put gunny bag on her. Thereafter, her husband Vilas came there and he put Chadar on her. She further stated that she was harassed by mother-in-law only and that her husband, her father-in-law and brother-in-law, did not harass her. She has further stated that her mother-in-law desired that she should not live with her husband after the Court case. She concluded by saying that earlier statement given by her was given under pressure. In this statement, the deceased does not implicate any one except her mother-in-law, namely, the respondent No. 3.

8. The contention of the learned Advocate for the applicant is that the story of demand of Rs. 30,000/- for purchasing trax and consequent ill-treatment has come into picture only after death of the deceased and there was no whisper about it previously. In fact, it appears that after the marriage, which was performed in May, 1996, the deceased had stayed with the respondent Nos. 2 to 4 for about 4 months after she was left at the residence of her father. It appears that thereafter a petition for divorce was filed by the respondent No. 2 but the matter was under reconciliation and deceased was sent to live with her in-laws from 25.4.2000. In the F.I.R. lodged by the applicant, father of the deceased, on 2.12.2000 it has been stated that for the first 3 months after the marriage the deceased was treated well by her in-laws, but thereafter they started harassing her on account of money and the respondent No. 2 asked for Rs. 30,000/- in order to purchase another trax even though he had one black-yellow trax and since the applicant was not in a position to meet the demand, the deceased was being beaten and harassed. It is further stated in the F.I.R. that at the end of 4 months, the respondent No. 2 left the deceased at the house of the applicant and told her not to come back unless Rs. 30,000/- are brought. Other statements of the family members of the applicant also speak about the demand for Rs. 30,000/- for the purchase of trax. It is, however, pertinent to note that in notice dated 5.2.1997, which was given by the deceased to respondent No. 2, the demand was said to be Rs; 5,000/- or T.V. and Godrej Almirah, but the case of the applicant in the F.I.R. is that a demand of Rs. 30,000/- for trax was made within 3 months of the marriage and at the end of 4 months of the marriage, the deceased was left at the residence of the applicant. If that is so/then the demand of Rs. 30,000/- should have certainly figured in the notice dated 5.2.1997, since the marriage is reported to have been performed in the month of May, 1996 and the deceased according to the applicant himself was left at her residence, say somewhere in September/October, 1996 and it is at that time that the demand of Rs. 30,000/- was made. As I have already pointed out that the demand in notice dated 5.2.1997 is altogether different. There is no material on record to show that the demand for Rs. 30,000/- as alleged in the F.I.R. had been previously made. There are no doubt allegations of ill-treatment and beating in the said notice, but there was subsequent reconciliation and the deceased again started staying with the respondent Nos. 2 to 4 from somewhere on 25.4.2000, after which again it is alleged that she was ill-treated.

9. In the F.I.R. dated 2.12.2000, it was stated that the respondents harassed the deceased physically and mentally on account of money and are responsible for getting herself burnt by stove. Of course, what is

exactly meant by this, may have to be clarified by the applicant during the course of evidence, but, at this stage it appears that it means that the deceased had herself burnt her. Then in the first dying declaration, the deceased had stated that her Saree caught fire on account of inflated flames of the stove and she did not blame any one for the same. The question whether this statement was under pressure, will again be subject matter of evidence, even though in the second dying declaration, it is stated that the earlier statement was given under pressure.

10. In these set of facts, even though the orders granting anticipatory bail and bail do not disclose any reasons, yet the material on record was prima facie sufficient for the purpose of granting bail. Therefore, I am of the opinion that no case for cancellation of bail has been made out and the application for cancellation of bail is hereby rejected.