

Samey Singh Vs. the State of Haryana and anr.

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Court : Punjab and Haryana

Decided On : Jun-01-1995

Reported in : I(1996)DMC356

Judge : Sarojnei Saksena, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 439; [Indian Penal Code \(IPC\), 1860](#) - Sections 304B; Evidence Act - Sections 113B

Appeal No. : Crl. Misc. No. 3586-M of 1995

Appellant : Samey Singh

Respondent : The State of Haryana and anr.

Advocate for Def. : P.S. Sullar, AAG for Respondent No. 1 and; D.V. Gupta, Adv. for Respondent No. 2

Advocate for Pet/Ap. : R.S. Sihota, Adv.

Disposition : Petition allowed

Judgement :

Sarojnei Saksena, J.

1. Petitioner's Counsel submits that deceased Sushila was married to respondent No. 2 on April 30, 1993. In the marriage sufficient dowry articles were given, but

still respondent No. 2, who is the husband of deceased Sushila, his parents, brother and sister were not satisfied with the dowry. They demanded Rs. 50,000/- more. As this money could not be arranged, they tortured Sushila and beat her. Whenever she went to her parental house, she made a complaint that because of non-payment of Rs. 50,000/- she was being tortured and was threatened to be eliminated. She apprehended that some day she would be killed by these persons. Her parents always pacified her and sent her back to her matrimonial home. They tried to pacify all the accused persons also but they continuously pressed their demand for payment of Rs. 50,000/- and continued torturing her. Ten /fifteen days before her death, when she came to her parental home she again made the same complaint and refused to go back to her husband. When respondent No. 2 came to take her back, the complainant, her father, refused to send her back, saying that he was harassing and beating her because on non-payment of Rs. 50,000/-. At that time, respondent No. 2 told the complainant that he should immediately arrange for the money and thereafter he would neither harass Sushila nor give her beating. On December 11, 1994 the complainant received the information of the death of Sushila. He alongwith certain other villagers reached village Hodal and found his daughter lying dead in the matrimonial home. As per this report, she had certain injuries on her body. They protested that it was not a case of suicide but rather a case of murder. Despite this the, complainant and his co-villagers were made to sit in a room and the accused persons cremated the body forcibly without getting the post-mortem done. Petitioner's Counsel submits that thereafter the complainant made an attempt to lodge a report at Hodal but it was not recorded and, therefore, on December 14, 1994 he submitted an application to the Deputy Superintendent of Police, Palwal, whereupon this case was registered.

2. Admittedly, respondent No. 2 is a Police Constable. After the registration of the case, he moved the Sessions Court for granting him anticipatory bail. Interim anticipatory bail was granted to him immediately till January 10, 1995. Thereafter he filed a certificate before the Sessions Court saying that on December 11, 1994, till 4 p.m. he was on his duty at Madhuban. Considering this document, the Additional Sessions Judge, Faridabad, allowed his petition for anticipatory bail on January 11, 1995 holding in the last para that 'keeping in view the facts and totality of the circumstances particularly applicant was not present in the village as he was

at the place of posting, Investigating Officer/Arresting Officer is directed to release the applicant on bail to his own satisfaction, in the event of his arrest.'

3. Petitioner's learned Counsel vehemently contended that the prosecution agency has favoured respondent No. 2 as is apparent from Para No. 2 of the impugned order, wherein it is mentioned that the learned PP assisted by the complainant, has not disputed the fact that the accused (respondent No. 2 herein) was on duty on December 11, 1994 upto 4 p.m. when he proceeded for casual leave after hearing about the death of his wife. He also complained that the investigation is done in a half-hearted manner and perhaps it has come to an end.

4. Learned Assistant Advocate-General, Haryana, placed the case diary before me. He submitted that the investigation is over. Challan is already presented in the Court.

5. Under these circumstances, the petitioner-complainant, father of the deceased, has filed this petition for setting aside the impugned order, whereby the husband of the deceased is enlarged on anticipatory bail. Relying on *State of Orissa v. Rajendra Prasad Bhadia*, [1994(2) All India Criminal Law Reporter 647 (SC)] and *Raj Singh v. Sudhir*, 1994(1) R.C.R. 449 he contended that in such a case concession of grant of anticipatory bail should not have been given to respondent No. 2, who is husband of the deceased, especially when the case is registered under Section 304-B, I.P.C. He commented that the Additional Sessions Judge has not taken into consideration the presumption that is to be raised in such a case under Section 113-B of the Evidence Act. Even at this initial stage he has accepted the plea of alibi of respondent No. 2 and at that juncture he has fallen into an error.

6. Learned Counsel for respondent No. 2 relying on *Bhagirathsinh Judeja v. State of Gujarat*, AIR 1984 S.C. 372 contended that bail can be cancelled only if it is shown that the accused would not be readily available for trial or that he is likely to abuse the discretion granted in his favour by tampering with evidence. In the petition under consideration, no such allegation is made by the petitioner. Hence, once he is enlarged on bail, there is no ground to cancel the bail order. He also stressed that at the time when Sushila died respondent No. 2 was on duty at

Madhuban. He produced photocopy of that certificate which was issued on his asking by the concerned authorities to show that on December 11,1994 till 4 p.m. he was on duty at Madhuban and thereafter on receiving the information of the death of his wife, he proceeded on seven days' casual leave.

7. It is true that very cogent and overwhelming circumstances are required for ordering cancellation of bail. The material considerations are whether the accused would not face the trial or whether he is likely to tamper with the prosecution evidence. This fact is very material in this case that respondent No. 2 is a Police Constable. There are specific allegations of demand of dowry and consequent harassment to the deceased at the hands of respondent No. 2 and his near relations. The Additional Sessions Judge while passing the impugned order was impressed by the document filed by respondent No. 2 saying that on December 11,1994 till 4 p.m. he was on duty at Madhuban. The original documents or their photo copies were not produced before the Additional , Sessions Judge for perusal. Only certificates signed by superior Police Officials were placed before the Additional Sessions Judge. Further at the stage of granting bail, the Additional Sessions Judge ought not to have considered the plea of alibi of the petitioner. Moreover, in this case when the offence is registered under Section 304-B, I.P.C, presumption has to be drawn under Section 113-B of the Evidence Act, which respondent No. 2 is required to rebut. From the case diary, it is evident that a list of 20 witnesses is prepared. Parents of the deceased and her brother are examined. Apart from them there are four independent witnesses. Thereafter 9 Police Officials are examined. Director, F.S.I. is also a witness in this case. Petitioner's Counsel has made an emphatic attack on the way in which the investigation is conducted in this case. It is his specific submission that the investigation is hurriedly concluded to support the cause of respondent No. 2. With that object, even when the anticipatory bail petition was considered by the Additional Sessions Judge, the prosecution agency admitted that the accused was present at his place of duty on December 11,1994, till 4 p.m.

8. Considering the totality of the circumstances stated above in my considered view this was not a fit case where anticipatory bail should have been granted by the Additional Sessions Judge. The Additional Sessions Judge has gone wrong in

granting anticipatory bail simply on the ground that respondent No. 2 was on his place of duty on December 11, 1994 till 4 p.m. From the evidence collected in the diary, *prima facie* case under Section 304-B, I.P.C., appears to have been made out. In view of these facts, the petition is allowed and the impugned order granting anticipatory bail to respondent No. 2 is set aside. He be taken in custody immediately. At the same time, it is made clear that if during trial respondent No. 2 files a fresh petition for enlarging him on bail, the Sessions Court will be at liberty to reassess and re-examine the facts of the case and to decide the bail application without being influenced by the observations made in this order.

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