

Balbir Kumar Datta Vs. the State and ors.

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Court : Delhi

Decided On : Dec-05-2000

Reported in : 2001IIAD(Delhi)313; 89(2001)DLT361; I(2001)DMC326; 2001(57)DRJ624

Judge : Mr. Dalveer Bhandari

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 439(2) and 482; [Indian Penal Code \(IPC\), 1860](#) - Sections 438 and 498-A/304-B/34

Appeal No. : Crl. Misc. (M). No. 2622 of 1999

Appellant : Balbir Kumar Datta

Respondent : The State and ors.

Advocate for Def. : Mr. P.N. Lekhi, Sr. Adv. and ; Mr. Satender Sharma, Adv.

Advocate for Pet/Ap. : Mr. Surender Anand, Adv

Judgement :

ORDER

Dalveer Bhandari, J.

1. This is a petition under Section 482 read with Section 439(2) of the Code of Criminal Procedure filed by the unfortunate father of AAAarti, who had committed

suicide on 28.5.1999 about one year after the marriage. The petitioner -father of the deceased- is aggrieved by the order passed by Shri R.S.Verma, learned Additional Sessions Judge granting bail to respondent No.3 (Rakesh Bali) on 6.8.1999 and granting anticipatory bail to respondent Nos.4 to 9 on 31.7.1999 & 4.8.1999 in a case where there are clear and specific allegations that the unfortunate incident of Aarti's death had taken place because of harassment and cruelty on account of demand of dowry. According to the petitioner, the court was not justified in granting bail to Rakesh Bali and anticipatory bail to the other accused persons, particularly, when there was so much material on record regarding the harassment of the deceased on account of demand of dowry. The petitioner has prayed that the bail granted to Rakesh Bali be cancelled. He also prayed that the anticipatory bail granted to other co-accused persons be cancelled.

Brief facts which are necessary to dispose of this petition are recapitulated as under:

2. The marriage of the petitioner's daughter, Aarti, was performed with Rakesh Bali at Jammu on 17.4.1998. Aarti was an extremely accomplished person. She had a very impressive academic record. She had also excelled in the extra-curricular activities. It is stated in the petition that the petitioner had spent a lot of money in the marriage of deceased Aarti and gave her goods and articles much beyond his capacity.

3. On June, 1998 when Aarti came to her parental house, she informed her mother that her in-laws had high expectations about the dowry and were passing oblique remarks. It is also stated in the petition that on the eve of Karvachauth, the petitioner's wife came to Delhi and brought a lot of things for her newly married daughter. She also gave a cash amount of Rs.10,000/-. It is stated in the petition that Aarti insisted her mother to take her to Jammu as she was not willing to stay in her matrimonial house due to atrocities inflicted on her by her husband, father-in-law, mother-in-law and other family members. It is further stated that the petitioner's wife tried her level best to sort out the differences between her daughter and her in-laws. At that time Aarti told her mother that her husband and

other family members used to harass her and had even started man-handling her with abusive words. Rakesh Bali, husband of the deceased, demanded Rs.2 lakhs as he was in urgent and desperate need of money. The petitioner's wife told Rakesh Bali, her son-in-law that , they belonged to a service class family and they were unable to arrange the money at the 11th hour. It is further stated that on every occasion the petitioner used to give gifts and cash to the family members of Rakesh Bali.

4. It is stated that on 17.5.1999 the petitioner's wife received a telephone call from his daughter Aarti telling her that she is facing cruelty and atrocities at the hands of her husband, father-in-law, mother-in-law, sister-in-law, brother-in-law and she would not survive and apprehends her death, at any time in her matrimonial house. On 28.5.1999, the sister-in-law of Aarti rang up at the petitioner's house and informed that Aarti had swallowed some poisonous substance and she was unwell. The petitioner called up at the matrimonial house of Aarti and was informed by respondent No.5 that Aarti had committed suicide in her bed room by hanging herself with her dupatta.

5. Immediately, after hearing about the untimely death of Aarti, the petitioner and other close family members rushed to Delhi. They informed their family friend Pramod Kumar Taneja regarding this unfortunate incident who in turn reported the matter to the police at Patel Nagar and a case under Section 498A/304B/34 of IPC was registered. Rakesh Bali (respondent No. 3) was arrested on 30.5.1999. The Sub-Divisional Magistrate recorded the statements of the petitioner, his daughter Shivani and his wife Sanyogita Dutta. The SDM also directed the S.H.O. to register the case under the relevant provisions of the IPC. It is alleged in the petition that from the very beginning the investigating officer of the case and the SHO, Patel Nagar took no interest to get the case properly investigated. The Investigating Officer refused to accept the written statement submitted by the petitioner. The Investigating Officer also refused to receive the statement of Shri Mohsin Zaidi and warned him not to interfere in the process of law otherwise he would have to face dire consequences. It is mentioned that when the anticipatory bail petition was moved on behalf of the other accused before the learned A.S.J., the Investigating Officer of the police station Patel Nagar and the Public

Prosecutor intentionally and deliberately with malafide intentions concealed the material facts of this case from the Court and even did not place the case diary of the Investigating Officer before the Court. All other accused persons who moved the bail application under Section 438 were granted bail by the order of the learned A.S.J.-Shri R.S. Verma. Six out of seven accused persons got anticipatory bail by the order of the learned A.S.J.. The learned A.S.J. -Shri R.S.Verma - on 6.8.1999 enlarged Rakesh Bali (husband of the deceased) on regular bail. It is also mentioned in this petition that on 22.8.1999, the petitioner's wife Along with her daughter and son were in Delhi and she was threatened by the accused persons. They warned her not to proceed with the case otherwise she and all others would have to face the dire consequences. They also threatened the petitioner that they are very influential people and they can get anything done which is impossible for a common man. They also indicated that they had already managed to get anticipatory bail and warned that in case anybody from the petitioner's family is found or seen in Delhi that person would be eliminated. A report of this incident was filed before the in charge, Police Post, Amar Colony, Lajpat Nagar, New Delhi. Where the petitioner could not get any help from any quarter then the petitioner has moved this Court for the cancellation of bail granted to the accused persons.

6. The relevant portion of the anticipatory bail order by which the six accused persons were granted anticipatory bail is reproduced as under:

'Present: APP for the State.Counsel for the Applicant.IO Insp. Parvati is also present'

In the order it is mentioned that the Inspector Parvati concedes that parents, brother and Bhabhi of the husband of the complainant have already been granted anticipatory bail. I.O. also concedes that there are no allegations of harassment caused to the deceased soon before her death on the ground of dowry demand.

7. On the other hand, the defendants' counsel has placed on record the copies of the statements of the parents and brother of the deceased, as recorded by the S.D.M. which contains the allegations of harassment by the accused persons. It is pertinent to mention that Parwati Kaur, Inspector, Distt. Crime Cell West had filed

an affidavit before this Court in which she had submitted that she carried out the investigations in this case. Paras 2 and 3 of the affidavit read as under:

'That on 17th June, 1999 I appeared in the Hon'ble Court of ASJ Tis Hazari Court to attend the Anticipatory Bail Matter of Accused Yogesh Bali and Vinay Bali and again appeared on 29th July, 1999 for anticipatory bail of accused Vinay Bali and on 16.7.1999 for Regular Bail of accused Rakesh Bali who was under going the judicial custody and again on 5.8.1999 for accused Rakesh Bali. At all these occasions I filed my written reply strongly opposing the bail of the accused persons through APP for state and also pleaded for not granting bail to the accused person. Apart from it I also submitted my strong opposition for granting bail to the accused persons on 31.7.1999 and 6.8.1999 through APP when the Hon'ble Court had granted bail to the accused persons.

That I had not concealed any fact of demand of dowry and allegations of being harassed by the accused person. I made my submissions in writing to the Hon'ble Court of ASJ Tis Hazari too opposing the bail application. In support of my version I place Photocopies of the reply submitted in the bail matters of accused persons. Copies of the same are filed herewith as Annexure-I collectively.'

8. It is submitted by the petitioner that the learned Additional Sessions Judge ought to have decided the case on the basis of the available record including the statements recorded by the S.D.M. instead of concession by the A.P.P. through the Investigating Officer.

9. It may be pertinent to mention that the Investigating Officer has filed an affidavit before this court categorically denying that she made no concession before the court. On the contrary she strongly opposed the bail applications.

10. Some extracts of the statements recorded by the S.D.M. are reproduced to have the comprehensive view of the entire case. Ms Shivani Datta aged about 24 years, sister of deceased Aarti was examined by the S.D.M.. The relevant portion reads as under:

'I came to Delhi on 11.5.1999 with items of gifts and a cash of Rs.5,000/=. My sister told that, 'My husband, my mother in law, father in law, brother in law and sister in law used to beat me and torture me. My brother in law started beating my sister before me, while she was pregnant and told me to take her with me. He also told me that I cannot tolerate her and I will make second marriage, and the sister in law of my sister asked me that we should bring cash instead of clothes, etc. My sister further told me that these people are harassing me for want of dowry and they can murder me also. Tell Mummy and papa that they pass oblique remarks on me and they ask for more money.'

11. The statement of the father of the deceased was also recorded by the S.D.M. The relevant portion of the statement of Balbir Singh Dutta reads as under:

'When my daughter after her marriage came to Jammu Along with her husband, she also told me that her husband mother-in-law, father-in-law, brother-in-law and sister in law are harassing her for bringing less dowry and they had not appreciated the dowry Aarticles given to them. They did not allow her to meet her relatives and used to beat her even on trivial matters. I had suspicion that my daughter had been murdered by her husband, mother-in-law, father-in-law, brother-in-law & sister-in-law and legal action be taken against them.'

12. The statement of Smt. Sanyogita Datta, mother of the deceased was also recorded. The relevant portions of the same is reproduced as under:

'We had spent much more money on the Aarti's marriage than our status. Yogesh Kumar, Rakesh and his mother Vinay Bali said that marriage should be solemnised in a good hotel so we arranged the marriage at 'Hotel City Palace', and performed ring ceremony in 'Hotel Kranti' which costed us about Rs.1,75,00/=. We gave Rs.65,000/= in cash and jewellery worth Rs. 75,000/= and clothes worth Rs.70,000/=. After the marriage Aarti came in June, 1998 to our house Along with her husband and she told me that these people are highly temperamental and whatever had been given in dowry was disliked by these people. Best possible goods be, presented to these people. Aarti's husband told me that the choice of the residents of Jammu is very sub-standard so you give us money in place of commodities. When my daughter and her husband left our house, I gave them

Aarticles of their choice along with cash. I went to Delhi on the eve of Karvachauth. I gave Rs. 4 to 5 thousand to mother-in-law, father-in-law, brother-in-law and to my daughter. At that time my daughter asked me to take her to Jammu and said that she will not come back to Jammu for the reason that her husband, mother-in-law, and father-in-law used to beat her Along with her brother-in-law and sister-in-law. I purchased wrist watch for Aarti's husband for Rs.3,500/= and gold nose pin of 4 gms and one silver pen for Rakesh on his birthday and sent it to them. Rakesh told that you must have spent some amount, but you should also send cash. After that on the occasion of Lohri festival I gave goods worth Rs. 2-3 thousand Along with cash of Rs.2,000/-. When my daughter was pregnant, I had sent my younger daughter Shivani to Delhi with clothes and cash of Rs.5,000/= to be delivered to these persons, but Rakesh returned the clothes and mentioned that these are not of our standard. At that time the sister-in-law of Aarti told that you had not given clothes of good quality, so in future instead, send money to us. Rakesh told my daughter Shivani that you should take your sister with you, I will perform another marriage. My daughter gave birth to a male child on 26.4.1999. I went to my daughter's house after two or three days and I gave Rs.10,000/= in cash and goods worth Rs.2,000/= to these people and Rakesh also told me that he will get married again and send the boy to the hostel and will finish her. Aarti told me that in case I go from Jammu I will not return back. Do not send me back otherwise they will kill me. My daughter told this to me on 15.5.1999. I had a talk with my daughter on 17.5.1999 on telephone she told me that all these persons are maltreating me here and they are annoyed with her. On 28.5.1999 at about 2:30 p.m. Nandoi of Aarti made a telephone call at my house and said that Aarti is sick and serious so you and uncle must come immediately to Delhi by aeroplane. After that I made a telephone call at Aarti's place, and her mother in law told me that Aarti had put her Duppatta around her neck and gave no answer and cut off the telephone. After one and half an hour I received another telephone call from the Nandoi of Aarti and was informed that Aarti had died. Half an hour before I telephoned to Rajouri that Aarti has consumed poison. I have a doubt that my daughter had been killed by her husband, mother in law, father in law and jeth for want of dowry.'

13. The S.D.M. also recorded the statement of Mohsin Zaidi s/o Yousuff Zaidi, a close family friend and whom deceased Aarti treated like her brother and her (Aarti) parents treated him as their son. The relevant portion of the statement reads as under:

'Aarti was married on 17.4.1998 at Jammu in accordance with Hindu rites and rituals. Parents of girl had spent much money on the marriage beyond their limits. I used to talk with her once in a while after her marriage, she told me on telephone that her husband (Rakesh Bali) her mother-in-law (Vinay Bali) her father-in-law (Yogesh Bali) her elder brother-in-law Vikesh and Rinku (Jeth and his wife) used to torture me for want of dowry. I am too much harassed by them. Many a times my husband used to beat me at the instance of my mother in law jeth and jethani. I consoled Aarti that every thing will be O.K.

On 24.6.1999 Aarti gave birth to a male child and in this regard I was informed by the father of Aarti on telephone at my office and I was further informed that Aarti is being maltreated at her matrimonial house for insufficient dowry so I should go and see her. On hearing this I went to Aarti's house on 23.5.1999, it was Sunday, at Patel Nagar. Aarti was residing with her in laws on the first floor. I saw that Aarti was not well and she was frightened. I congratulated her on being a mother of a boy and enquired as to why she was so nervous. She with some difficulty told that 'My brother in laws are very cruel and greedy', she told me that they are demanding two lakhs of rupees from me and from my parents. In case the amount is not paid they will turn me out of the house. I told them that my father is not in a position to give me so much money. They had already spent a lot of money, on the marriage. On that my mother-in-law and father-in-law gave me severe beatings even my jethani did not spare me and beat me and my jeth witnessed the same quietly standing there. They had given me beating many a times and they had made my life hell. There was no joy in the family even when a boy was born. They kept torturing me and directed me to bring two lacs of rupees.'

14. The aforesaid statements were available with the learned Additional Sessions Judge when he decided the bail applications of the petitioners. In view of the these statements, no concession of any kind was required from the A.P.P. The

concession even if was given is quite contrary to the available record of the case.

15. The concerned Inspector who conducted the investigations - Ms Parwati Kaur has filed an affidavit before this court. She mentioned that a written reply strongly opposing the bail application of the accused persons was filed through the A.P.P. It is mentioned in the affidavit that she had strongly opposed the bail applications of these accused on all dates of hearings. In para 3 of the affidavit it is mentioned that she had not concealed any fact of demand of dowry and allegations of harassment by the accused persons.

16. It is not necessary for this Court to decide the issue whether the A.P.P. on the instructions of the investigating officer had in fact made any concession or not. In view of the available material on record, the learned Additional Sessions Judge ought not to have based his orders on the strength of the so called concession. The impugned orders dated 31.7.1999, 4.8.1999 and 6.8.1999 granting bail and anticipatory bail to the accused persons are accordingly set aside. However, the accused persons would be at liberty to move the learned Additional Sessions Judge again for the grant of bail. The concerned Court would be at liberty to decide the matter afresh on the available material on record.

17. This petition is accordingly disposed of.

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