

Bimla Vs. State

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Court : Delhi

Decided On : Nov-17-1998

Reported in : 1998VIIAD(Delhi)489; 77(1999)DLT300; I(1999)DMC162; 1999(48)DRJ672

Judge : J.B. Goel, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 437(1) and 438; [Indian Penal Code \(IPC\), 1860](#) - Sections 82, 83, 304-B and 498-A

Appeal No. : Crl.M.(M) No. 2283/98

Appellant : Bimla

Respondent : State

Advocate for Def. : Ms. Mukta Gupta, Adv.

Advocate for Pet/Ap. : Mr. K.K. Sud and; Ms. Kamna Vohra, Advs

Judgement :

ORDER

J.B. Goel, J.

1. This is a petition under Section 438 of the Code of Criminal Procedure (for short the 'Code') for anticipatory bail. Petitioner is the mother-in-law of the deceased.

2. Deceased Kamlesh was married to Narender on 8.5.1995. She was admitted in Safdarjung Hospital at 4.30 p.m. on 3.7.1998 with extensive burns all over her body. She succumbed to her injuries on 9.7.1998. The deceased had made a statement before the S.D.M. on 4.7.1998 at about 6.45 p.m. On the basis of her statement FIR No. 335/98 was registered at P.S. Vasant Kunj under Sections 498-A/307/34 IPC at 7.30 p.m. on that day.

3. After that the offences were converted to Sections 498-A/307/34 IPC. Statements of father and brother of the deceased were also recorded by the S.D.M. Police also recorded their statements.

4. During investigation, Narender, husband of the deceased; Padam Kumar and Pankaj, two brothers-in-law (devar) of the deceased were arrested on 4.7.1998 who had made disclosure statements about the circumstances leading to the occurrence. Petitioner was not available and was not arrested.

5. Learned counsel for the petitioner has contended that, firstly in the first dying declaration made in the M.L.C. the deceased has not implicated the petitioner; secondly, the petitioner is a woman and is entitled to bail in view of provisions of Section 437 of the Code and thirdly, even if proceedings u/s 82/83 of the Code may have been taken, that will not be a bar to grant bail. He has relied on certain case law.

6. Learned counsel for the State has contested this application and has disputed these contentions. She has contended that the offence is grave and serious; prima facie there is material showing the involvement of the petitioner also, and benefit of Section 437 of the Code is not available by way of an anticipatory bail and that the Petitioner has absconded and proceedings u/s 82/83 of the Code have been initiated against her. In these circumstances, the petitioner is not entitled to bail.

7. The deceased was not taken to the hospital by anyone from her in-laws but was taken by a neighbour. In the M.L.C., her general condition is given as critical. The alleged history allegedly given by the deceased as mentioned in the M.L.C. is sustaining burns while she was cooking on stove, suddenly the stove burst and she sustained burns. Burns interalia cover the entire back, thigh and leg (right) in

back and also on left thigh and leg, and front entirely. The cause of death is due to burn injuries.

8. In her statement made before the S.D.M. on 4.7.1998, recorded in question and answer form, she had stated that on Friday during day, Pankaj and Padam, two brothers-in-law, caught her hand and her husband Narender had brought petrol out of van, poured over her and set her on fire by lighting a match stick. She has given the reason that demand of dowry was being made, the demand had started after one year of marriage. They were demanding a scooter. To the question whether any such attempt was made earlier, she replied 'For last 2/3 days, my mother-in-law was saying in my presence that they will burn me. She went to her parents house. Earlier also oil was poured on me after about one month of marriage. I ran to a bath room. My brother-in-law, Padam had pushed the door but I had taken bath immediately...' (On English Translation).

9. She has further stated that her father-in-law had not been harassing her. This act was done by Narender, Pankaj and Padam (Dewars) and mother-in-law Bimla.

10. A site plan of the place of occurrence shown is roof of the house at point 'A' with a plastic can, plastic pipe and a ship brand match box lying nearby at point 'B' and mark 'C' is the place on road where Maruti van No. DL-2CF-6698 was parked in front of the same house wherefrom petrol seems to have been taken.

11. vide a seizure memo dated 3.7.1998 the following articles/things produced by the accused Narender in pursuance of his disclosure statement were seized from the roof of his house, namely, plastic can (which gave smell of petrol), one meter long plastic pipe and a wet match box (ship) containing 14 sticks. Van No. DL-2CF-6698 was also seized vide a separate memo from in front of their house.

12. Apparently, the scene of occurrence seems to be roof of the house and no stove, burst or otherwise has been shown lying there or seized nor produced.

13. All the three accused Narender, Padam and Pankaj in their disclosure statements have disclosed their having burnt the deceased by pouring petrol on her after removing from the aforesaid van.

14. Shri Roshan Lal (father) and Shri Dhani Ram (brother) of the deceased in their statements made before the S.D.M. and police, have alleged demand of dowry and harassment and also beatings being given to the deceased in that connection by her mother-in-law, husband and two brothers-in-law.

15. All the circumstances have to be taken into consideration to evaluate the circumstances leading to the occurrence. In the circumstances, it is doubtful if the burn injuries could have been caused by bursting of a stove. No such stove is found or produced. The extensive burns and inter alia the situs of some burns also suggest that these could possibly have been caused by pouring of some inflammable substance like petrol. The circumstances available seems to be more consistent with the latter possibility.

16. In the facts and circumstances, the possibility of the death being caused as a result of conspiracy between the four - mother-in-law, husband and two brothers-in-law as aforesaid of the deceased cannot be ruled out. Apparently it seems to be a heinous case of homicidal death by setting the deceased on fire by throwing petrol on her. The petitioner since the occurrence had been absconding and was not available. For that purpose proceedings under Sec. 82/83 of the Code have been initiated against her. She has evaded interrogation.

17. Inspire of the gravity and seriousness of the offence, the petitioner seeks bail under Section 438 of the Code by invoking Section 437, being a woman.

18. A three Judges Bench of the Supreme Court in Pokar Ram Vs . State of Rajasthan : 1985 CriLJ1175 has stated that :

'Relevant considerations governing the court's decision in granting anticipatory bail under Section 438 are materially different from those when an application for bail by a person who is arrested in the course of investigation as also by a person who is convicted and his appeal is pending before the higher court and bail is sought during the pendency of the appeal.'

Similar observations have been made in CBI Vs . Anil Sharma : 1997 CriLJ4414 as under :

'Consideration which should weigh with the Court while dealing with a request for anticipatory bail need not be the same as for an application to release on bail after arrest'.

19. These two cases have been followed in a recent case of *The State of Andhra Pradesh Vs . Bimal Krishna Kundu & Anr. : 1997 CriLJ4056* , where also it has been further held that :

'There is no indication in Section 438 of the Code for justifying a hiatus to be made among nonmalleable offences vivisecting those punishable with death or imprisonment for life and those others punishable with less than life imprisonment. No doubt such a classification is indicated in Section 437(1) of the Code, but that Section is concerned only with post-arrest bail and not prearrest bail.'

Disapproving the order of the High Court granting anticipatory bail in that case the Hon'ble Supreme Court had observed that :

'... It is disquieting that implications of arming respondents, when they are pitted against this sort of allegations involved well orchestrated conspiracy, with a prearrest bail order, though subject to some conditions, have not been taken into account by the learned Single Judge. We have absolutely no doubt that if respondents are equipped with such an order before they are interrogated by the police it would greatly harm the investigation and would impede the prospects of unearthing all the ramifications involved in the conspiracy. Public interest also would suffer as a consequence...'

Anticipatory bail granted by the High Court was cancelled.

20. In *Samunder Singh Vs . State of Rajasthan : 1987 CriLJ705* the Hon'ble Supreme Court in a dowry death case has disapprovingly noticed the grant of anticipatory bail by the High Court by observing as under :-

'The widespread belief that dowry deaths are even now treated with some casualness at all levels seems to be well grounded. The High Court has granted anticipatory bail in such a matter. We are of the opinion that the High Court should not have exercised its jurisdiction to release the accused on anticipatory bail in

disregard of the magnitude and seriousness of the matter. The matter regarding the unnatural death of the daughter-in-law at the house of her father-in-law was still under investigation and the appropriate course to adopt was to allow the concerned Magistrate to deal with the same on the basis of the Material before the Court at the point of time of their arrest in case they were arrested. It was neither prudent nor proper for the High Court to have granted anticipatory bail which order was very likely to occasion prejudice by its very nature and timing. We therefore consider it essential to sound a serious note of caution for future. The High Court is under no compulsion to exercise its jurisdiction to grant anticipatory bail in a matter of this nature.'

21. It has repeatedly been laid down by the Supreme Court that the court should avoid soft justice in such cases of bride burning.

22. In none of the cases relied by the learned counsel for the petitioner the legal position as noticed above has been considered or noticed. None of the cases relied by him is of the Supreme Court. Moreover, four of the cases relied by learned counsel for the petitioner were for regular bail under Section 439 and not under Section 438.

23. In view of this legal position, and in the facts and circumstances of the case, nature and gravity of the offence, in my view it is not fit and proper to grant anticipatory bail.

24. This petition is accordingly dismissed.