

Avtar Singh Vs. State

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Court : Delhi

Decided On : Jun-01-1994

Reported in : 55(1994)DLT539

Judge : Devinder Gupta, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 439

Appeal No. : Criminal Miscellaneous (Main) Appeal No. 1510 of 1994

Appellant : Avtar Singh

Respondent : State

Advocate for Pet/Ap. : D.C. Mathur,; Kamakshi Mehlwal,; H.J.S. Ahluwalia,;

Judgement :

Devinder Gupta, J.

(1) This is a petition for grant of bail under Section 439 of the Criminal Procedure Code for the offences punishable under Section 498A and 406 IPC. The facts of the case are that on the complaint of Mrs. Paramjit Kaur, who is a practicing Advocate at Tis Hazari in Delhi, a case under Sections 406 and 498A of Indian Penal Code was registered which is the subject matter of Fir No. 98/94, Police Station Anand Parbat, West Distt, New Delhi.

(2) During the course of arguments, it has been pointed out that or additional allegations fresh charges have been leveled against the petitioner under Sections 420, 494 and 495 of IPC.

(3) The petitioner is also a practicing Advocate and he was earlier practicing in Punjab and had shifted his practice to Delhi in the year 1991 and had been staying with one Mrs. Harbans Kaur as a paying guest since she was his neighbour in Punjab.

(4) On 4/07/1993, petitioner married Paramjit Kaur, but the marriage could not prove successful since both of them developed strained relations which ultimately led to the filing of this complaint by the complainant. The petitioner was arrested on 14/05/1994. In order to get recovered certain dowry articles, the Duty Magistrate remanded him to police custody for two days and since 16th May, 1994, he is in judicial custody. An attempt to obtain bail failed when petitioner's application was rejected by Additional Sessions Judge, Delhi on 20th May, 1994. The petitioner has reproduced the order refusing grant of bail to him. The petitioner has contended that prima facie no case under Section 420 is made out and Sections 494 and 495 are bailable. The Additional Sessions Judge while declining to grant bail observed that Section 495 Ipc would be attracted where earlier marriage was concealed. Ingredients of Section 415 Ipc which defines cheating read with Section 420 Ipc would also be attracted and there is no bar in proceeding under the said provisions. Another consideration which prevailed with the Additional Sessions Judge, Delhi is that the other co-accused Harbans Kaur is absconding and is not traceable and the entire jewellery is stated to have been removed.

(5) My attention has now been drawn to a copy of the order passed on 27th May, 1994 by which Harbans Kaur has been granted interim bail and she has been directed to join investigation in connection with the case in question.

(6) I have heard the arguments at length and Shri H. Singh, Advocate on behalf of the State has addressed the arguments. Mr. K.K. Sud, Advocate appearing for Paramjit Kaur has also been permitted to address arguments.

(7) It is contended on behalf of the complainant that copy of the order passed by Additional Sessions Judge has not been appended and the petitioner has not disclosed the fact that after the dismissal of earlier application for bail, petitioner has filed fresh application for grant of bail before Additional Sessions Judge and it is fixed for 4th June, 1994, on that basis alone this petition is liable to be dismissed.

(8) It has been submitted that by concealing the fact of the earlier two marriages, the petitioner contracted the third marriage with Paramjit Kaur and in case bail is granted, the petitioner is likely to cause bodily harm to Paramjit Kaur, who has before arrest given beating to her.

(9) As noticed above, the petitioner and the complainant are the Advocates and the petitioner is in judicial custody since 16th May, 1994 and other co-accused has been granted interim bail and is available for interrogation since 27th May, 1994.

(10) The fact that copy of the order refusing grant of bail has not been appended cannot be a ground to dismiss the bail application. It is not disputed that the order in verbatim has been reproduced in the body of the petition. The authenticity of the order is not disputed. In these circumstances, filing separately a copy of such order cannot be fatal to the maintainability of this bail application.

(11) At the very outset when it was pointed out that the petitioner had not disclosed the fact of having again moved the Sessions Court for grant of bail and the bail application was coming for arguments on 4th June, 1994, learned Counsel for the petitioner stated that he has instructions not to press the said application. Even if this fact is not disclosed, in view of the statement that such a application will not be pressed, I do not consider that non-disclosure of this fact alone will be sufficient ground to refuse the grant of bail, in case the petitioner is otherwise entitled to grant of bail in the facts and circumstances of the case. In *Mohan Singh v. Union Territory of Chandigarh*, : 1978 CriLJ844 , the Apex Court declined to cancel the grant of bail on the ground that the accused had not disclosed before the Sessions Court that he had moved for bail in the High Court. On the ratio of this judgment, the objections of the respondent has no force.

(12) It is stated on behalf of the respondents that the petitioner is likely to misuse the liberty granted to him. The objection is also un-founded since no material has been brought out to my notice that the petitioner is likely to commit a crime if bail is granted to him or that he will misuse the bail. The police had sufficient time to carry on investigation since the matter was reported on 12th May, 1994. Search was conducted and the petitioner was arrested on 14th May, 1994 and since 16th May, 1994 he is in judicial custody.

(13) In *Gurcharan Singh v. State*, Air 1978 Sc 179 guidelines have been laid down for the exercise of judicial discretion while granting bail. One of the circumstances is that unless exceptional circumstances are brought out to the notice of the Court which may defeat proper investigation and a fair trial, the Court will not decline to grant bail to a person who is not accused of an offence punishable with death or imprisonment for life.

(14) Having considered the facts and circumstances of the case, the nature of offences alleged and the background of the parties, I consider it to be a fit case for grant of bail. Consequently, I allow the application and direct the petitioner to be released on bail on his furnishing a personal bond in the sum of Rs. 10,000/- with one surety in the like amount to the satisfaction of the concerned Magistrate. The petitioner will, however, join investigation as and when required to do so. The application stands disposed of.