

Saria Devi Vs. Om Prakash Omi

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Court : Delhi

Decided On : Nov-14-1995

Reported in : 1995IVAD(Delhi)957; 1996(36)DRJ237

Judge : A.K. Srivastava, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 439(2)

Appeal No. : Criminal Miscellaneous Appeal No. 2747 of 1994

Appellant : Saria Devi

Respondent : Om Prakash Omi

Advocate for Pet/Ap. : K. Vohra,; K.B. Andley and; B.M. Sabarwal, Advs

Judgement :

A.K. Srivastava, J.

(1) This petition has been moved under Section 439(2) of the Code of Criminal Procedure for cancellation of bail granted to respondent No.1, Om Prakash @ Omi by the Additional Sessions Judge, Shri Prithvi Raj vide his order dated 20.9.94.

(2) The petitioner is Smt. Saria Devi wife of late Shri Hukum Chand. The respondent No.1, Om Prakash @ Omi, is facing trial for allegedly having committed murder of said Hukum Chand (husband of the petitioner) on 12.1.91.

He was arrested on 13.1.91, His First bail application was rejected by an Additional Sessions Judge by order dated 15.9.92. His second bail application was rejected by Additional Sessions Judge, Shri Prithvi Raj on 29.9.93. This High Court also dismissed the bail petition of respondent No.1 vide order dated 7.1.94. Thereafter third bail application was moved before the trial court presided over by Shri Prithvi Raj, Additional Sessions Judge who had earlier refused bail to the respondent No.1. This application has however been allowed on 20.9.94. A copy of the bail order is at pages 23-24 of the paper book. On perusal of this order it would appear that the learned Additional Sessions 'Judge has granted bail, inter alia, on the grounds: that all the material witness for the prosecution have been claimed except police officials; that the witnesses who had already been examined show some kind of contradictions; that there is no chance of tampering with the evidence by the accused if he is released on regular bail; that the accused did not misuse interim bail granted to him; that there was no complaint of any kind against the accused from any side while he was on interim bail; that the accused has already suffered a lot of custody and that he is of teenage.

(3) From the above it would appear that the learned Additional Sessions Judge has granted ball on other grounds than on merits of the prosecution case which were there at the lime when three earlier bail applications were dismissed one by him, one by the other Additional Sessions Judge and the third by this High Court on 7.1.94.

(4) In view of above, it would appear that the only thing which remains to be considered is whether it was proper on the part of the Additional Sessions Judge to have granted bail when the High Court had refused bail to respondent No.1. There is no dispute to the proposition that the lower court can grant bail if fresh grounds are there, hut the question of propriety always remains there. In my view when the bail had been refused by the High Court the Additional Sessions Judge ought not to have taken into consideration the grounds that the accused was teenage because that ground must have been considered by the courts below and by this Court when bails were refused. Coming to the ground that the accused has already suffered a lot of custody I am again of the view that this also should not have been considered by the Additional Sessions Judge as a ground for bail.

Rather the Additional Sessions Judge who is trying the case should have expedited the trial. Further when the accused was refused regular bail by a High Court then granting regular bail by the trial court on the grounds that the accused did not misuse the interim bail granted to him was not proper. thereforee, the learned Additional Sessions Judge has committed an act of impropriety in granting bail on considerations which should not have been there especially when the High Court had rejected bail on merits.

(5) Now I come to the question whether the bail granted to respondent No. 1 be cancelled in view of what has been said above. For cancellation of bail considerations are different. The petitioner does not say that the respondent No.1 has misused the bail and has threatened her. In ground 'O' of-her petition at page 13 of the paper book she only says that the release of the accused has been celebrated by beat of drums whereas the present petitioner along with her minor children had to leave the locality of the accused for fear, hostility and danger to her safety and the safety of her children. There is nothing in the petition to show that the accused respondent No.1 has done any overt act in threatening the petitioner or creating an atmosphere of danger to her or her children. The petitioner has already shifted to Mehrauli and she is not a witness for prosecution. I can understand that she is the direct victim/sufferer of the murder of her husband but the matter of cancellation of bail granted to accused of the offence has no connection to the petitioner's plight unless it is shown to the Court that the victim/sufferer being witness for prosecution is being threatened.

(6) I Find that the State has not moved any petition for cancellation of bail. Now when the bail has been granted and the State is not complaining about the conduct of the accused it would not be proper to interfere.

(7) In the aforesaid circumstances, I do not consider it to be a fit case for cancellation of bail and, thereforee, the petition is dismissed.

(8) However, the trial court is directed to expedite the trial of the case.