

Rajiv @ Raju Vs. State

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Court : Delhi

Decided On : May-18-2005

Reported in : 121(2005)DLT120; 2005(82)DRJ607

Judge : Badar Durrez Ahmed, J.

Acts : Code of Criminal Procedure (CrPC) - Sections 437(1), 439 and 439(1)

Appeal No. : Bail Appln 199/2005

Appellant : Rajiv @ Raju

Respondent : State

Advocate for Def. : Pawan Sharma, Adv.

Advocate for Pet/Ap. : Kamna Vohra, Adv

Judgement :

Badar Durrez Ahmed, J.

1. The learned counsel for the petitioner submitted that the petitioner is not the person who has caused any injury on the deceased. The petitioner even as per the case for the prosecution, is the one who is alleged to have caused an injury on Ejaz, who is the son of the deceased. She further submits, after drawing my attention to the MLC, that the nature of injuries has been indicated as 'simple'. The

counsel for the petitioner also stated that the injured Ejaz was discharged on the same day.

2. The learned counsel for the State opposed the grant of bail and he cited the decision of the Supreme Court in the case of Gurcharan Singh and Ors. v. State (Delhi Administration): 1978 SCC (Cri) 41 and in particular he referred to para 24 thereof which reads as under:-

'24. Section 439(1) Cr. P.C. of the new Code, on the other hand, confers special powers on the High Court or the Court of Session in respect of bail. Unlike under Section 437(1) there is no ban imposed under Section 439(1), Cr.P.C. against granting of bail by the High Court or the Court of Session to persons accused of an offence punishable with death or imprisonment for life. It is, however, legitimate to suppose that the High Court or the Court of Session will be approached by an accused only after he has failed before the Magistrate and after the investigation has progressed throwing light on the evidence and circumstances implicating the accused. Even so, the High Court or the Court of Session will have to exercise its judicial discretion in considering the question of granting of bail under Section 439(1), Cr. P.C. of the new Code. The over-riding considerations in granting bail to which we adverted to earlier and which are common both in the case of Section 437(1) and Section 439(1), C.P.C. of the new Code are the nature and gravity of the circumstances in which the offence is committed; the position and the status of the accused with reference to the victim and the witnesses; the likelihood, of the accused fleeing from justice; of re eating the offence; of jeopardising his own life being faced with a grim prospect of possible conviction in the case of tampering with witnesses; the history of the case as well as of its investigation and other relevant grounds which, in view of so man valuable factors, cannot be exhaustively set out.'

3. Upon a consideration of the aforesaid extract, it becomes clear that there is no ban imposed under Section 439 against the grant of bail by the High Court to the persons accused of offences punishable up to death or imprisonment for life. However, the considerations that have to be kept in mind while granting bail, have been indicated by the Supreme Court.

4. Considering these very factors which are indicated above, I find that the allegation against the present petitioner is that of having caused simple injuries to Ejaz, who is not the deceased. It also appears that the position and status of the complainant party as well as the accused party is the same and there does not appear to be any likelihood of the offence being repeated or the petitioner fleeing from justice. Considering all these factors, I feel that the petitioner, who has already been in custody since 27.04.2004, is directed to be released on bail on furnishing a personal bond in the sum of Rs.10,000/- with one surety of the like amount to the satisfaction of the concerned court. The petitioner shall not, in any manner whatsoever, try to establish any contact with the complainant party.

The application stands disposed of.

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