

Maya Devi Vs. State

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Court : Delhi

Decided On : Dec-30-1996

Reported in : 1997(40)DRJ619

Judge : J.B. Goel, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 438

Appeal No. : Criminal Miscellaneous (Main) Appeal No. 3152 of 1996

Appellant : Maya Devi

Respondent : State

Advocate for Def. : Shri. M.S. Butalia

Advocate for Pet/Ap. : S.K. Puri,; Gaurav Puri and; M.S. Butalia, Advs

Judgement :

J.B. Goel, J.

(1) By this order I shall dispose of petitioner's application under section 438 of the Code of Criminal procedure for anticipatory bail.

(2) Briefly the facts are that an information of quarrel taking place at House No.18, Joga Bai was received at Police Post Okhla Head through Wireless message at 10.50 A.M. and another similar information was received at 10.55 A.M. These

informations were recorded as Dd No.11 and Dd No.12 on 20.11.1995. The injured, now deceased, Smt. Urmilla was removed from the place of occurrence by Head Constable Mohinder Singh on Pcr and got her admitted in Safdarjang Hospital where Mlc No.74086 was recorded at about 11.00 Am or 12.00 Noon and the injured gave the history of the injuries as under:

'ALLEGED history of burns sustained when neighbours put her on fire on quarrel relating to some plot.'

(3) As per Mlc she was having 60% deep burns and her general condition was critical. In the meantime, Head Constable Birla Singh from Police Post had also reached the Hospital and in the presence of the Doctor on duty he had recorded the statement of the injured Smt. Urmilla wherein she had stated that she was a resident of House No.18, Joga Bai; they owned another plot near her house on which dispute was going on; she was present at that plot at about 10.30 Am when Titu, Raju and Karan set her Chhappar there on fire; Sonu and his mother Mahindri pushed her into the fire; she got up but Shanti, mother of Meva Ram, and Maya again threw her in the fire and she got burnt. She also stated that these persons intended to kill her. In the meantime, Si Ram Lal of Pp Okhla also reached the Hospital; he collected the Mlc and the aforesaid statement recorded by Hc and made his endorsement and got the Fir registered for offence under section 307 Indian Penal Code During investigation statement of some other persons were also recorded and involvement of Meva Ram, and Jugal Kishore besides the 7 persons named in the first information statement was also found. Titu, Raju, and Karan were arrested on the same day on 20.11.1995. They were granted bail by an Additional Sessions Judge on 12.12.1995. Meva Ram and Jugal Kishore were arrested on 4.12.1995 and they were granted bail by the Additional Sessions Judge on 13.12.1995. Shanti, Mahindri, Maya and Sonu had applied for anticipatory bail. An interim bail was granted by this Court on 29.12.1995 and this interim bail was confirmed in Crl. M.(M) No.3068/95 on 4.1.1996 with the following order:

'THE order of December 29, 1995 is confirmed. This disposes of the petition. dusty also.'

(4) The injured remained admitted in the Hospital and died in the morning on 12.1.1996. On her death case was registered/converted for offence under section 302 Indian Penal Code .

(5) Raju @ Raj Kumar was arrested under section 302 Indian Penal Code on 27.2.1996 and Meva Ram and Jugal Kishore, were arrested on 28.2.1996. Ashok @ Titu had applied for anticipatory Bail which was rejected by the Additional Sessions Judge on 7.5.1996 and he surrendered in Court on 8.5.1996 and was arrested. Karan Singh was arrested on 15.5.1996. Other four accused persons, namely, Mahindri, Maya, Shanti and Sonu remained unarrested and process under section 82 and 83 Criminal Procedure Code . against them was ordered on 20.5.1996. Meva Ram and Jugal Kishore were admitted to bail by this Court vide order dated 24.4.1996 and on the basis of this order Ashok @ Titu was admitted to bail by Additional Sessions Judge and Karan Singh was also similarly admitted to bail by Additional Sessions Judge on 16.5.1996. It appears that Raj Kumar was also admitted to bail in the meantime. Sonu and Shanti had applied for anticipatory bail which was dismissed in default on 24.6.1996 perhaps because of some false birth certificate was relied for the grant of anticipatory bail to Sonu. Sonu's bail application was again rejected on 12.9.1996. Mahindri had again applied for bail. Initially interim bail was granted and on 29.11.1996 she was granted anticipatory bail. While granting bail on 29.11.1996 following observations have been made:

'OUT of the above persons Titu, Raju and Karan are on bail. Besides that Meva Ram and Jugal Kishore are also on bail. Petitioner is stated to be a patient and she is also suffering from some disease and hospital record has been annexed Along with the petition. Taking into consideration all these facts and also keeping in view the fact that she is a lady and some of the co-accused are also on bail I direct that in the event of arrest the petitioner will be admitted to bail on her furnishing a personal bond in the sum of Rs.10,000.00 with one surety in the like amount to the satisfaction of arresting Officer/superior Officer.'

(6) Subsequently Sonu has also been admitted to anticipatory Bail vide order dated 19.12.1996 by this Court with the following observations:

'ON the date of the incident according to the said certificate (School Certificate) the petitioner was of the age of 16 years and 3 days old. and other accused are already on bail including the mother of the petitioner who has been granted bail on 10.11.1996. In the circumstances and looking at the young age of the petitioner I direct that in the event of arrest the petitioner will be admitted to bail on his furnishing a personal bond in the sum of Rs.10,000.00 with one Surety of the like amount and

(7) Now out of the 9 accused Shanti and Maya present applicant remains unarrested. As already noticed process under section 82/83 has already been ordered on 20.5.1996 and it appears that these ladies have been absconding. Only Maya Devi has filed this application for anticipatory bail.

(8) I have heard Shri S.K. Puri, learned counsel for the petitioner and Shri M.S. Butalia, learned counsel for the respondent State.

(9) Learned counsel for the petitioner has mainly contended that out of 9 accused persons 7 have already been admitted to bail. The injured had died after 52 days and so far no challan has been filed. Prosecution story is not reliable and trustworthy and there are material contradictions. The petitioner being a lady and her husband is ailing being a paralytic patient; and the role assigned to the petitioner is the same as assigned to all others or not different from Mahindri and Sonu who have been admitted to anticipatory bail and in the circumstances, the petitioner is also entitled to anticipatory bail. Whereas learned counsel for the State has very strongly opposed the bail application. Inter alia, he has contended that the applicant has absconded and proceedings under section 82 & 83 have been initiated. Circumstances of the petitioner are materially different from the circumstances and the role of the other accused who have been admitted to bail. Taking into consideration the nature and circumstances role of the petitioner and the gravity and nature of offence the petitioner is not entitled to anticipatory bail.

(10) I have considered the contentions and perused the material on record and also the investigation file which was made available to me. The occurrence had taken place on 20.11.1995. So far, investigation has not been completed and challan has not been filed though by now over 13 months are over. The deceased

in her statement had stated that she was thrown in burning fire by the applicant; she succumbed to the injuries after 52-53 days in the Hospital where she remained admitted. She was taken to the Hospital in serious condition.

(11) As noticed above 5 of the accused, namely, Titu, Raj Kumar, Karan, Meva Ram, and Jugal Kishore were arrested twice; first under section 307 Indian Penal Code and thereafter under section 302 Indian Penal Code and they remained in custody for some time on both occasions and they were admitted to regular bail under section 439 of the Criminal Procedure Code. Jugal Kishore and Meva Ram are not named in her statement while the role of other 3 of these persons imputed by the injured in her first information statement is not the same that is assigned to other four accused persons, namely, Sonu and Mahindri, on the one hand, and Shanti and Maya Devi, on the other. Sonu has been admitted to bail primarily because of his Young age as he was found to be 16 years and 3 days old at the time of occurrence and Mahindri has been admitted to bail because of her ill health. The role assigned to the present applicant Along with Shanti is different in as much as it is alleged that after the deceased was first pushed in the burning fire she had got up and she was again thrown in the burning fire by Shanti and Maya which obviously resulted in serious burn injuries. Like Maya, Shanti is also absconding.

(12) Some of relevant considerations for granting anticipatory bail are the nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the applicant's presence not being secured at the trial, reasonable apprehension that the evidence will be tampered with and 'the larger interests of the public or the State.'

(13) The Supreme Court in Kiran Devi Vs . State of Rajasthan had observed that grant of anticipatory bail in murder case when investigation is still incomplete is not justified. In another case Samunder Singh VS . State of Rajasthan : 1987 CriLJ705 again it was held that anticipatory bail should not be granted by the High Court to a person against whom investigation in connection with dowry death is still going on. In Pokar Ram Vs . State of Rajasthan : 1985 CriLJ1175 it was laid down that anticipatory bail to some extent intrudes in the sphere of investigation of crime and

the court must be cautious and circumspect in exercising such power of a discretionary nature. Some very compelling circumstances must be made out for granting bail to a person accused of murder by fire arm when the investigation is in progress. It was also observed that when the power under Section 438 Criminal Procedure Code . was exercised sub silentio as to reasons or on considerations irrelevant or not germane to the determination, the Supreme Court, to avoid miscarriage of justice must interfere. Throwing a human being in burning fire is in no way less dangerous act.

(14) The deceased in her statement made in the Mlc had stated that she was thrown in the fire by her neighbours and thereafter in her first information statement which was recorded soon thereafter in the presence of the Doctor, she had given the circumstances giving rise to the occurrence and the circumstances in which and by whom she was got burnt. Taking into consideration the circumstances, the role of the applicant, nature of the offence and the fact that the applicant remains unarrested having absconded for the last over 10 months as a result of which the investigation could not be completed during the last about 13 months, in my view, it would not be in the interest of administration of justice nor in the interest of the public and the State to admit the petitioner to anticipatory Bail.

(15) This application is accordingly hereby dismissed.

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