

Harsh Rastogi Vs. State

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Court : Delhi

Decided On : Sep-30-2005

Reported in : 124(2005)DLT241; 2005(84)DRJ554

Judge : R.C. Chopra, J.

Acts : Indian Penal Code (IPC) - Sections 34, 307, 406 and 498A; Code of Criminal Procedure (CrPC) - Sections 437 and 438

Appeal No. : Bail Appln No. 2175/2004

Appellant : Harsh Rastogi

Respondent : State

Advocate for Def. : Sunil K. Kapoor, Adv.

Advocate for Pet/Ap. : Satish Tamta,; Ruchi Kapur and; Aman Lekhi, Adv

Disposition : Application allowed

Judgement :

R.C. Chopra, J.

1. The petitioner seeks anticipatory bail under Section 438 of the Code of Criminal Procedure (hereinafter referred to as 'the Code' only) in FIR No.240/2005 registered at PS Dwarka under Sections 307/498-A/406/34 IPC.

2. The prosecution case against the petitioner as disclosed in the FIR lodged by the wife of the petitioner is that the petitioner and complainant were married at Delhi on 26th February, 2002 in accordance with Hindu rites and customs. According to the complainant, her parents spent considerable amount in the marriage and also gave cash, jewellery, electronic goods, furniture etc. According to her, right from day one of the marriage, the petitioner, his parents, his brother and wife started taunting the complainant saying that she had brought less dowry. The parents of the petitioner used to say that they were getting Rs.30 lacs as dowry for the petitioner from others. Thereafter, the complainant was tortured, beaten and harassed. As per the demand of her in-laws, she continued to bring various items from her parents including A.C., Juicer, Microwave Oven, Roti Maker, Computer etc. but they were not satisfied. According to her, once the petitioner had tried to get her kidnapped also. The petitioner and complainant started living separately in a flat at Dwarka. On 22nd January, 2005 when the complainant wanted to get some clothes stitched for attending a marriage, the petitioner told her that they would not attend the marriage and went away. In the evening, when he came back, he started quarreling with the complainant and even tore her clothes. When she went into kitchen to turn off the gas, the petitioner came from behind and threw some thinner upon her as a result of which, she caught fire. When she asked the petitioner to save her, he put a condition that he would save her only when she makes a promise that she would not tell anybody that he had put her on fire. She agreed but thereafter, the petitioner deliberately put a synthetic jacket on her face as a result of which, she suffered more burns on her face. The petitioner took her to hospital where her parents also came. She was later shifted to Safdarjung Hospital. According to the complainant, the petitioner and her parents were continuously threatening her and as such, she did not tell anybody as to what had happened to her. She alleged that because of the burns, she was not in a position to speak also. A complaint was lodged on 22.6.2005 upon which FIR was registered on 24.6.2005. According to the complainant, till the said date the petitioner and his parents were giving her threats that in case she lodged a complaint, the incident may be repeated. On 8th May, 2005 also, the petitioner had beaten her regarding which she had gone to Police Station for making a report.

3. Learned counsel for the petitioner submits that the marriage between the petitioner and the complainant was a love marriage but was performed as an arranged marriage and as such, it was a simple marriage. According to learned counsel, there was no dowry demand and the entire case against the petitioner and his family is false. It is submitted that the complainant had accidentally caught fire in kitchen in which the petitioner also burnt his hands badly while trying to save her. Learned counsel points out that in the MLC, which was prepared soon after the incident, the Complainant had stated that the injuries were accidental. On 26.1.2005, the Complainant was examined by SDM before whom also she had stated that the fire was accidental and the petitioner had also suffered burn injuries while trying to extinguish the fire. On 22.6.2005, in her complaint, on the basis of which the FIR was registered, the complainant for the first time, made allegations of dowry demands, harassment etc. and also disputed her statement made before SDM. He also points out that after her discharge from the Hospital on 20.2.2005, the complainant had gone back to her matrimonial home and her parents had also accompanied her which shows that they had no grievance against the petitioner or his family. In the discharge summary prepared at Safdarjung Hospital also, the history of the incident was given by the complainant and it was stated that it was accidental fire. It is also stated that the petitioner has been thrown out of his own flat by the complainant and his family. It is submitted that the Doctors at Channan Devi Hospital or at Safdarjung Hospital did not find any traces of thinner and did not give any opinion that the injuries suffered by the complainant were due to fire by thinner and as such, there are good grounds for holding that the allegations of attempt to murder, dowry related harassment as well as torture are false.

4. Learned counsel for the State as well as learned counsel for the complainant, on the other hand have argued that at this stage, it cannot be held that the allegations against the petitioner are false. It is submitted that the burn injuries on the person of the complainant were to the extent of 40%. It is submitted that soon after her marriage, the petitioner and his family started harassing the complainant as the dowry was below their expectations but the petitioner crossed all limits when he threw thinner on the complainant, who was standing in the kitchen near gas stove as a result of which, she caught fire and suffered injuries. It is submitted that the statement recorded by the SDM on 26.1.2005 was a manipulated

statement inasmuch as on the said day, the complainant was not in a position to speak even. It is argued that it is not understandable as to why and under what provision, the SDM came to record the statement of the complainant when no FIR had been registered. The delay in the filing of the FIR is stated to be mainly on account of the threats held out by the petitioner and his family. It is also submitted that the MLC shows that a neighbour Manoj had taken the injured to the Hospital and as such, it cannot be said that the petitioner had tried to save her or had removed her to the Hospital. It is argued that the Police and the SDM are colluding with the petitioner and are trying to save him. It is also pointed out that on 8th May, 2005 also, the petitioner had assaulted the complainant and as such, the complainant had gone to SHO, PS Dwarka but her complaint was not registered. Learned counsel for the complainant has argued that the case diaries show that on 26.1.2005 at 4.50 p.m., Dr. K.Prasad had certified that the patient was fit for statement and at 4.50 p.m. itself, the SDM appeared in the Hospital and started recording the statement of the complainant and completed it by 5.00 p.m. which shows that this statement has been manufactured and was not made by the complainant as alleged by the Police and the petitioner.

5. After considering the submissions made by learned counsel for the parties and scrutinizing the case diaries, this Court finds that the DD entry was recorded on the night of 22nd and 23rd January, 2005 when the complainant was admitted in Channan Devi Hospital. This DD entry was on the basis of a report from Channan Devi Hospital. DD No.9-A was also recorded on 23.1.2005 on the basis of information from the Safdarjung Hospital and as such, Suresh Kumar, S.I., was fully justified in getting the statement of the injured recorded as he wanted to find out as to whether a cognizable offence had been committed or not. In such cases, F.I.Rs. are registered even on the basis of statements recorded by S.D.Ms.

6. It is also to be noted that on 23rd and 24th January, 2005, the Doctors had declared the complainant unfit for making a statement and as such, her statement could not be recorded by SDM. It does not stand to reason as to why the Doctors, who were not finding her fit on 23rd and 24th January, 2005 for making a statement should have falsely certified her to be fit on 26th January, 2005. The contention that the endorsement of Doctor was at 4.50 p.m. and the SDM started

recording the statement also at 4.50 p.m. shows that the statement is manipulated cannot be accepted for the reason that on finding out that the complainant had improved, the concerned Police Officer might have called the SDM and then after obtaining a certificate from the concerned Doctor, requested him to record the statement which he started doing immediately. There is nothing on record to show that the Doctors, SDM and the Police Officer were conniving and colluding with the petitioner to manufacture a false defense for the petitioner.

7. It may also be mentioned that the allegations of the complainant in regard to the petitioner's attempt to murder her do not appear to be well founded inasmuch as in the MLC at Channan Devi Hospital and in the records of Safdarjung Hospital nothing was stated in regard to any attempt to murder her. Rather, the stand taken was that the complainant had caught fire accidentally. If the petitioner had tried to kill the complainant, he would not have burnt his hands seriously in an effort to save her. In FIR even it was stated that the petitioner had tried to extinguish fire on the complainant. The fact that a neighbour Manoj Kumar had taken the complainant as well as injured to the Hospital does not show that the petitioner had not taken complainant to Hospital as the Fir and records show that he had also gone to Hospital along with complainant.

8. Moreover, there is no evidence with the Police to show that the injuries suffered by the complainant were caused by thinner which is a Chemical. The fact that after her discharge from the Hospital on 20.2.2005 the complainant went back to her matrimonial home where her parents also accompanied her also indicates that till the said date, the complainant or her family had no grievance against the petitioner. It is not suggested even that up to 20.2.2005, the complainant was not in a position to speak and as such, her parents did not know that an attempt to kill her had been made by the petitioner. In the MLC recorded at Channan Devi Hospital, which was the first version of the incident, it was stated that the fire was accidental. If it was not so, the complainant could have told the Doctors at least, after she recovered, that it was a case of attempt to murder her. The allegations of threats by the petitioner and his family to the complainant due to which the complainant did not disclose the incident to anybody are prima facie not believable. In Safdarjung Hospital, the complainant was admitted by her own

father V.K. Sharma and she herself had given information to the Doctors while giving history of the injury that she had sustained thermal burn injury while she was cooking in her home on a gas stove. In the records pertaining to the petitioner also at the time of his admission in Hospital, the petitioner had disclosed in the presence of the father of the complainant that he had sustained thermal burns while extinguishing fire on his wife, who sustained burns while cooking on a gas stove.

9. This Court finds that there is no satisfactory Explanation for the delay in the filing of the FIR. The incident was of 22.1.2005 and the FIR was lodged in the month of June, 2005. It cannot be, prima facie, believed that during this entire period the complainant, her parents and family members were so much terrorized or threatened by the petitioner and his parents that they had no courage to reveal the incident in question. If on 8.5.2005 the complainant could go to Police Station for lodging a report on that very day or soon thereafter she or her parents could have sent a complaint through post even to the Commissioner of Police giving the details of the incident in question and complaining that complainant was being threatened by the petitioner or some manipulations had been done by the Police at the instance of the petitioner. At this stage, the Court is unable to discard the statement of the complainant recorded by the SDM on 26.1.2005 in which the complainant had stated that she had suffered burn injuries accidentally only while working in kitchen. The endorsement of Dr. K.Prasad, prima facie, shows that the complaint was fit for making a statement on 26.1.2005.

10. Under the circumstances, at this stage, this Court is not in a position to, prima facie, hold that the petitioner had attempted to kill the complainant by putting her on fire. It appears to be a case of accidental fire. It is true that anticipatory bail is not granted to an accused concerned with such a serious offence but there must be some evidence against him to satisfy the Court that he has committed the offence. If facts and circumstances brought on record indicate that he is innocent he must get the protection of Court under Section 438 Cr.PC and saved from the harassment and torture of detention and custody. It would be a travesty of justice if an innocent person is made to languish in jail.

11. Accordingly, the petitioner's application for anticipatory bail is allowed and he is ordered to be released on bail upon his executing a personal bond in the sum of Rs.25,000/- with one surety in the like amount to the satisfaction of the Arresting Officer. The petitioner shall, however, join investigations as and when required. The petitioner shall surrender his passport, if any, to the Investigating Officer and shall not leave the country without the permission of this Court. He would also not try to influence the complainant or prosecution witnesses or interfere in the investigations in any manner whatsoever.

12. It is clarified that this protection is given to the petitioner only till the filing of the challan after which the petitioner would move the Court concerned under Section 437 Cr.PC and seek regular bail in accordance with law.

13. Nothing stated herein shall be taken as an expression of opinion on the merits of the case as the observations made herein are tentative only on the basis of the evidence available with the prosecution so far.