

Parminder Singh and anr. Vs. the State

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Court : Delhi

Decided On : Nov-02-2001

Reported in : 95(2002)DLT410; I(2002)DMC191; 2002(61)DRJ336

Judge : S.K. Agarwal, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 438 and 482; [Indian Penal Code \(IPC\), 1860](#) - Sections 406 and 498-A

Appeal No. : Crl. M.(M) No. 3896/2001

Appellant : Parminder Singh and anr.

Respondent : The State

Advocate for Def. : Pawan Sharma, Adv.

Advocate for Pet/Ap. : Sunil Mittal, Adv

Judgement :

S.K. Agarwal, J.

1. In this petition under Sections 438 and 482 of the Code of Criminal Procedure, 1973 (for short 'Cr. P.C. '), petitioners have sought directions that they be not arrested pending final disposal of their application for grant of anticipatory bail, by the Court of Additional Session Judge, New Delhi in the case FIR No. 218/2001,

under Sections 498-A/406 IPC, P.S. Nariana.

2. Brief facts necessary for disposal of this application are: that on 5th September, 2001, Ms. Jasmine Nagpal sent a report to the Deputy Commissioner of Police, Crime Against Women (Cell), alleging that on 26th November, 2000, she was married to Sarabjit Singh; after the marriage, she was harassed, treated with cruelty and humiliation by her husband and his relations and that when she reached her matrimonial home, her father-in-law, mother-in-law, brother-in-law (Nandoi) and sister-in-law (Nand) started saying that the complainant's father did not marry her according to their status; on the basis of this complaint, above-noted case was registered by the police and the matter is being investigated.

3. Petitioner No. 1, brother-in-law, (Jija of the husband of complainant) and petitioner No. 2, sister-in-law (sister of the husband of the complainant) moved an application for grant of anticipatory bail before the Court of Additional Session Judge, New Delhi (for short 'A.S.J.') submitting therein that they have been falsely implicated with certain oblique and ulterior motives and that they have never interfered in any manner with the family affairs of the complainant and her husband and that the allegations against the petitioners are vague and general in nature. Learned A.S.J. vide orders dated 20th October, 2001 directed the investigating agency to collect material/evidence with regard to the Istridhan articles and adjourned the bail application for hearing for 7th November, 2001 without granting any interim protection against arrest to the petitioners. Petitioners by this petition have prayed for protection against their arrest pending final disposal of their application for bail before the ASJ.

4. I have heard learned counsel for the petitioners and learned APP for the State.

5. Law with regard to grant of anticipatory bail is well settled by the Supreme Court in Gurbaksh Singh Sibbia etc. v. The State of Punjab, : 1980 CriLJ1125 and several other subsequent decisions. It was observed:-

'The powerful processes of criminal law can then be perverted for achieving extraneous ends. Attendant upon such investigations, when the police are not free agents within their sphere of duty, is a great amount of inconvenience, harassment

and humiliation. That can even take the form of the parading of a respectable person in hand-cuffs, apparently on way to a court of justice. The foul deed is done when an adversary, is exposed to social ridicule and obloquy, no matter when and whether a conviction is secured or is at all possible. It is in order to meet such situations, though not limited to these contingencies, that the power to grant anticipatory bail was introduced into the Code of 1973.'

6. The Supreme Court also took note of 41st Law Commission of India's report which recommended the introduction of the provisions for grant of anticipatory bail in Cr. P.C. Para 39.9 of the report reads:-

'39.9. The suggestion for directing the release of a person on bail prior to his arrest (commonly known as 'anticipatory bail') was carefully considered by us. Though there is a conflict of judicial opinion about the power of a Court to grant anticipatory bail, the majority view is that there is no such power under the existing provisions of the Code. The necessity for granting anticipatory bail arises mainly because sometimes influential persons try to implicate their rivals in false cases for other purposes by getting them detained in jail for some days. In recent times, with the accentuation of political rivalry, this tendency is showing signs of steady increase. Apart from false cases, where there are reasonable grounds for holding that a person accused of an offence, is not likely to abscond, or otherwise misuse his liberty while on bail, there seems no justification to require him first to submit to custody, remain in prison for some days and then apply for bail.

7. Section 498-A and related penal provisions were enacted to meet the social challenge and to save the married women from being ill-treated for demand of dowry by her husband or by his relations. However, it is also true that whenever there is a matrimonial discord, there is always a tendency to involve large number of relations of the husband out of vengeance or otherwise or pur pressure for suitable settlement. Such a tendency has to be deprecated. It is needless to point out, in cases where there is no likelihood of the accused fleeing from justice, or tampering with the evidence, or a clear case for custodial interrogation is not made out and the application for grant of anticipatory bail cannot be heard at an early date, then the interim protection should normally be provided to such accused

persons. Otherwise, the very object and purpose for grant of anticipatory bail would get defeated.

8. In this case, admittedly, petitioner No. 1 and petitioner No. 2 are Jija and sister of the husband of complainant. They were married long before the marriage of the complainant. They are living separately. There is no material on record to suggest that they would not participate in the investigation or that they would flee from justice or tamper with evidence. Investigations are still in progress. Under the circumstances, I find merit in the petition.

9. For the foregoing reasons, impugned order dated 20th October, 2001 is modified to the extent let the petitioner be not arrested pending final disposal of the anticipatory bail application by the Additional Sessions Judge, subject to the condition that they shall participate in the investigation as and when required.

10. Any observation made herein would not affect merits of the case.

11. Petition stands disposed of.