

Mt. Choki Vs. the State

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Court : Rajasthan

Decided On : Dec-03-1953

Reported in : AIR1957Raj10; 1957CriLJ102

Judge : Ranawat, J.

Acts : [Constitution of India](#) - Article 15 and 15(3); [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 497 and 498; Indian Penal Code (IPC) - Sections 34 and 302

Appeal No. : Criminal Bail Appln. No. 153 of 1953

Appellant : Mt. Choki

Respondent : The State

Advocate for Def. : C.B. Bhargava, Adv.

Advocate for Pet/Ap. : O.C. Chaterjee, Adv.

Disposition : Application allowed

Judgement :

ORDER

Ranawat, J.

1. This is an application for grant of bail on behalf of Mt. Chokhi against whom a case under Section 302 read with Section 34. Penal Code is going on in the Court of Sessions Judge at Jhunjhunu.

2. Mt. Chokhi and her husband Chunna have been prosecuted for the murder of their child aged about seven years named Manbhari and the trial has already begun in the Court of the Sessions Judge. Five prosecution witnesses have been examined who are said to be eye witnesses.

It is stated that both Mt. Chokhi and her husband conspired to murder their child in order to implicate Gangaram and others who are said to be on inimical terms with them. An application for grant of bail was made on behalf of Mt. Chokhi in the Court of Sessions Judge who dismissed it on two grounds:

1. that there were no extenuating circumstances in the case.

2. that under the [Constitution of India](#) no leniency could be shown to a woman on account of her sex,

3. This application has now been filed under Section 498, Criminal P. C, for grant of bail. It is urged on behalf of the petitioner that she is a woman and she has got a young son who is not in jail and there is nobody to look after him. The trial of the case is likely to take very long and the conduct of the case and the cultivation of the petitioner would suffer if she is not released on bail. It is further urged that the learned Sessions Judge was wrong in interpreting the provisions of the [Constitution of India](#) in the way in which he did.

4. The learned Government Advocate has stated that the view taken by the learned Sessions Judge about the provisions of the [Constitution of India](#) is not correct. Article 15 of the Constitution provides that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

In Sub-clause (3) of this Article, it has been provided that nothing in this Article shall prevent the State from making any special provision for women and children. The learned Sessions Judge probably did not read Sub-clause (3) before

expressing the view that the provisions of Section 497, Sub-section (1) which were in favour of women and children were ultra vires of the Constitution. The position in the Constitution appears to be that it is open to the State to make laws containing special provisions for women and children, but no discrimination can be made against them on account of their sex etc.

The provision of Section 497, Criminal P. C. which gives a special treatment to the cases of the children and women is therefore, not inconsistent with the provisions of Article 15 of the [Constitution of India](#).

5. The prosecution story which has been stated in the order of the lower Court is an extra-ordinary one. It is not necessary for this Court at this stage to go into the merits of the case. The petitioner is the mother of the deceased child and it is said that she had another child outside the Jail to be looked after, it is also urged that there is nobody from the family of the accused persons outside the jail who would look to the conduct of the proceedings at the trial.

Section 497, Criminal P. C. lays down that when any person accused of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police station, or appears or is brought before a Court, he may be released on bail, but he shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or transportation for life provided that the Court may direct that any person under the age of sixteen years or any woman or any sick or infirm person accused of such an offence be released on bail.

Under Section 498 the scope for grant of bail is much wider, but ordinarily the principles contained in Section 497 should be considered in such cases. Under Section 497 it is open to a Court to grant bail to a woman even in cases where she is accused of an offence which is punishable with death or transportation for life.

Having regard to the extraordinary manner in which the offence is alleged to have been committed and the other circumstances of the case, it appears not unreasonable to allow this petition and to accept heavy bail of the petitioner in order to safeguard her appearance at the trial.

6. This application is allowed and it is ordered that Mt. Chokhi may be released on bail on executing a personal bond for Rs. 5000/- and on furnishing two sureties in the like amount to the satisfaction of the Sessions Judge Jhunjhunu for her appearance in the Court. She would remain on bail till such time as the trial Court sees reasons to pass an order to the contrary.

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