

Ashok Kumar Sharma and ors. Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Mar-07-1980

Reported in : 1980WLN447

Judge : G.M. Lodha, J.

Appeal No. : S.B. Misc. Bail Application No. 170 of 1980

Appellant : Ashok Kumar Sharma and ors.

Respondent : State of Rajasthan

Advocate for Pet/Ap. : Mr. Tibrewal

Judgement :

G.M. Lodha, J.

1. Dowry hungry vultures, having failed, in getting T.V. Frieze, Scooter and coins of Rs. 25,000/- (price for selection as Tehsildar) started teasing, taunting insulting and creating intolerable torture, resulting in severe mental agony, apathy for such disgraceful beastly life and nervous break down of an innocent, beautiful educated yet helpless newly married girl, who was thus forced to commit suicide by burning herself alive such is the tragic' pathetic, hair raising, heart breaking, nerve cracking, conscious shocking and society rocking, one line prosecution story of Urmilla the deceased and crime of abatement of suicide by husband Ashok Kumar

and his dowry starving family members. Yet the prayer is for extraordinary, exceptional judicial favour of bail without jail', by the alleged 'dowry devils'. Urmilla's 'death will' is as under: (Reproduced from police Diary):

eq>s ugh irk vki yxsxks ds tgu es bruk fo'k Hkjk iM+k gS vki ,d ,d djds vkjksi eq> ij yxkrs jgs ysfdu vkus ;s Hkh lskpk dh eq>s fdruk nq%[k gksxk A ugh! tc ;s ckrs vki yxsxks us mBkbZ gS rc ls vkt rd fdruk ekufld nq%[k eSus mBk;k gS A Hkxoku u djs fdlh vkSj yM+dh dks mBkuk iMs A vki eEeh th vkidh ckrks ls vkus ;s tkfgj fd;k fd eq>s u rks mudh ;kn vkrh gS u vki lcls viukiu gS dk'k eS vkidks viuk g`n; [kksyjdj fn[kyk ldrh A dk'k! ,slk Hkh dEi;wVj foKku us cuk;k gksrk ftlls Hkkoukvks dk irk pyrk A rc vkidks ekywe gksrk fd esjh Hkkouk;s D;k gS eq>s vQlksl gS fd vki yxsx ds fnekx es ,slh xyr ckrs dSlS vk;h A ;gka ifjLFkfr;ka ,slh cu x;h gS A dqN vkidh n`f`V Hkze Hkh g SA Hkxoku tkurk gS fd esjs fdruk dlwj gS vki tSlS balkuks ds lkeus es lQkbZ nsuk Hkh ugh pkgrh A bZ'oj ds vkxs dksbZ iijnk ugh gS AmlDks vlfy;r dk lc irk gS A vc eq>s nq%[k dqN de gS A ysfdu vki yxsxks ds fnekx es tks ckrs c SB x;h gS mls fl QZ eS ej dj gh lkQ dj ldrh gWw A ;fn fQj Hkh vki dks esjs mij fo'okl u gks rks vkids deZ vkids lkFk ls vkSj esjs deZ esjs lkFk A vki vkSj nhnh esjs lkFk lksUn;Z lksUn;Z dk ckj ckj o.kZu dj jgs gS A bZ'oj tkurk gS fd eSus dHkh vius dks lqUnj ugh le>k A ysfdu vkids eqrkfcd lksUn;Z dk izn'kZu djrh gWw Aml lksUn;Z dks ges'kk ds fy, feVk jgh gWw A vc rks vki [kq'k gksuk A eS fdlh dks nq%[k nsus ugh vkmxh Avki lg'kZ [kq'kh thou ;kiu djuk A esjs ckbZ&ckcwth; nknH HkkbZ lkgc cguk dsk nq%[k vo'; gksxk A Hkxoku mudks nq%[k dks lgu djus dh 'kfDr ns A;g lk=t:j t:j mudks iMok nsuk A ejus dh cgqr fnuks ls lksp jgh Fkh A ysfdu ekSr us Hkh esjk lkFk NksM fn;k A 29&11&79 dh jkr dks eSus pwgks okyk lkjk tgj [kk fy;k Fkka ysfdu ekSr Hkh eq>ls ukjkt Fkh flok; xys psgjs ds lwtu ds tgj us esj dqN u fcxkM+k tc cqjs fnu vkrs gS rc dksbZ lkFk ugh nsrk A ekSr Hkh eaqq eksM+ xbZ A ojuk vkt rd esjk dke reke gks x;k gksrk oks lkstu ,elh dh otg ls ugh Fkh A tSlS vkus nhnh ykM+ dh gS oSlS eS vius eka cki dh ykMyh csaVh Fkh A eq>s Hkh l;kj dh vko;'drk Fkh A vkSipkfjd l;kj ds flok; dqN Hkh ugh feyk A eS cgqr vlf'g'.kq LoHkko dh yM+dh FkhA ysfdu irk ugh bruh ckrs MakVuk ;s lc eSus brus fnuks dSlS lgu dj fy;k A esjh ,d lkM+h Cykmt isfVdksV ls nc jgh Fkh A ;fn ;s bruh lkjh gks xbZ oks vkidsk vius csVs dh 'kknH gh ugh djuh pkfg, FkhA ckrs fny es cgqr lkjh gS ij ckrs fy[k ugh ldrh A esjh viuh bPNk;s vkSj esjh vkSj Hkkoukvks dsk vki yxsxks us le>k gh ugh A vkSj esjh cnfdLerh FkhA dHkh eq>s ;g le>us dh dksf'k'k ugh dh gS Ags bZ'oj vki ls

izkFkZuk gS fd vc vkxs ls ,slh lh/kh yM+dh iSnk u djuk tks bruk nCcw LoHkko dh gks tks vius vf/kdkjks d fy, Hkh u yM+ lds A esjh ekSr dh ftEesnkj eS [kqn gh gwW A

g0 mfeZyk

The case has been registered under Section 306 I.P.C. against the petitioners Ashok Kumar, husband of the deceased and Kumari Nirja, sister of Ashok Kumar Sharma in addition to mother-in-law and father-in-law on the allegation that the accused used to torture the deceased Urmila for not having brought sufficient dowry'. Thus mental torture of the deceased Urmila as per the prosecution allegation became unbearable and as a result of this she committed suicide, after an earlier attempt to suicide has failed. The suicide note shows that Urmila earlier tried to commit suicide also by taking certain poisonous drugs used for killing rats but she was not successful.

3. Mr. Tibrewal appearing for the petitioners have submitted that a bare perusal of the statement of prosecution witnesses Shri Ved Pal, Advocate, Shri Jai Dev and Jainarain prima facie shows that the phrases and words used there in are so artificial that the story has been concocted against the accused including petitioners. Mr. Tibrewal has also submitted few letters, which according to him prosecution agency has refused to accept, to show that relations between parties including spouses were cordial. It is argued that Ashok Kumar Sharma petitioner has been selected in the R.T.S. and he has to join his service by 15th March 1980 and if he is arrested he its likely to loose job permanently. It was also pointed out that Shri Ashok Kumar Sharma used to live at Alwar away from Urmila for the most of the period after marriage and he was not there on the day when suicide was committed by Urmila and therefore there was no occasion of Ashok Kumar Sharma indulging in torture which lead to suicide as contemplated under Section 306 Indian Penal Code. It was also pointed out that Kumari Nirja, is girl of 17 years and student of 10th class in Saint Anjeela and if she is arrested she would not be able to appear in the examination. Mr. Tibrewal contends that it is very unfortunate, incident but a false case for harassing accused has been made because the father of the deceased girl happened to be Dy. S.P. in Rajasthan.

4. Mr. Garg Learned Public Prosecutor vehemently opposed this bail application under Section 438 Cr. P.C. According to him provisions of anticipatory bail were introduced for exception and extraordinary cases where process of law was sought to be misused and abused by arrest for humiliating innocent persons. According to Mr. Garg the evidence of Shri Ved Pal Advocate is positive on the point that he has personally seen deceased girl Urmila being tortured by all the 4 accused on account of not bringing sufficient dowry from her parents. The evidence of Shri Jainarain was also read before me to point out that Urmila was told and teased, insulted, tortured for not arranging Rs. 25 000/ which has been spent in the selection of her husband Shri Ashok Kumar Sharma in Rajasthan Tehsildar Service. In addition to this not getting Television set Freeze and Scooter in dowry was also subject matter of taunts and torture to Urmila.

5. Mr. Garg's contention is that at the stage of investigation no exceptional and extraordinary reasons have been shown for which special exception should be made in favour of the deceased in the grant of anticipatory bail.

6. I have considered the submission of learned Counsel for the petitioner and the learned Public Prosecutor and also gone through the relevant record produced before me. The evidence of suicide note of educated girl shows that although husband may not be living with her at the time of death she was under tremendous mental strain and torture. The fact, according to this death note, of earlier attempted suicide and even after that attempt became unsuccessful, she persisted in making second attempt, shows that the mental torture pain and agony with which she was constantly suffering was terrible and of serious magnitude. It is very rare that after first attempt to suicide fails, another attempt is made after some time. It was the case of mental torture and certainly extremely serious type and that makes this social crime, of heinous and serious nature.

7. This court would not like to make any comment on evidence one way or the other Mr. Tibrewal's argument may ultimately be found to be correct or may be found to be wrong, but the least that can be said is that an advocate and 2 more persons have prima facie given evidence which found to be true not only but likely to prove fatal against accused on the factor that a constant demand and torture for

dowry as alleged have been made from an educated girl. The resultant repeated attempts for suicide revolts against the social conscience and also makes it a serious social crime of heinous nature. It is not a stray case, as several Urmilas are becoming victims of dowry deaths' homicide or suicide, as correctly pointed out by prosecution This is crime against society, against womanhood and above all against poverty. It deserves serious prompt attention by law makers, law interpreters and law enforcement machinery in addition to the special reformers. It is a 'slur' on society and 'stigma' on present generation. A social evil taking away precious lives of newly married girls-rarely noticed-deserves much more preventive stringent legislation.

8. The provision regarding anticipatory bail under Section 438 Cr. P.C. were intended for use very sparingly in the exceptional cases, where mala fide design is patent and not even latent. Such provisions cannot be used for circumventing normal procedure of arrest and investigation after arrest. Unless the accused shows that he has strong case where arrest is sought to be made in false concocted case to defame and humiliate' or black mail him, the anticipatory bail cannot be taken.

9. After the case was registered it was expected of the husband to have surrendered and cooperated with Investigating Agency and produce all letters before investigation to show his bonafides and remove clouds of suspicion as per his version. Instead of that he avoided arrest and remained absconding which makes his case worst. I am therefore of the firm view that it would be misuse of Section 438 if bail is granted to him, as at this stage he has no case for bail at all, much less for anticipatory bail.

10. Mr. Tibrewal has invited my attention to provisions of 437 Cr. P.C. and argued that the case of Kumari Nirja should be treated differently. The allegation of the prosecution is that both father in law and mother-in-law and husband in addition to Kumars Nirja were indulging in mental torture of the girl Urmila and that has resulted in suicide. If the father-in-law and mother-in-law and the husband as per prosecution, are all involved, part of Nirja girl of tender age certainly cannot be of any significance which would warrant detaining her in custody. I am inclined to the

liberal view so far as Kumari Nirja is concerned, as she is student of X class and of tender age. Her detention in police and jail is not unavoidable, when she is required to appear in examination. It has been brought to my notice that both father-in-law and mother-in-law have been released on bail by the Magistrate concerned under Section 439 Cr. P.C. This is unusual and abnormal in a case of this serious nature, but certainly supports prayer of Tibrewal for small girl Nirja's case.

11. The result is bail of Shri Ashok Kumar Sharma under Section 438 is rejected. He must surrender to police and allow the law to take its own course. I have already observed that at this stage he has got no case for even bail much less for anticipatory bail.

12. The bail application of Kumari Nirja Sharma under Section 438 is accepted. She would be released on bail if she is apprehended by the SHO Kotwali, Jaipur or the Police Officer to whom case is transferred on the following conditions:

(i) that she shall make herself available for interrogation by a police officer as and when required;

(ii) that she shall nor directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer;

(iii) that she shall not leave India without the previous permission of the Court.

13. Mr. Tibrewal contends that father of girl being an Inspector of Police, it is likely that accused would not get fairness in the investigation. It would be desirable that investigation is conducted by senior police officer of at least Dy. S.P. rank in view of the seriousness of this social crime and the high office held both by accused father and father of Urmilla.

14. The Public Prosecutor would intimate this to the authorities concerned and copy of this order be also sent to the Inspector General of Police, Rajasthan, Jaipur.

