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Court : Rajasthan

Decided On : Apr-17-1986

Reported in : 1987CriLJ610

Judge : Guman Mal Lodha, J.

Appellant : Arjun Singh

Respondent : State of Rajasthan

Judgement :

ORDER

Guman Mal Lodha, J.

1. Arjun Singh has moved this application Under Section 439, Cr. P.C. The case relates to the death of Kamla. The allegation is that Kamla was murdered by her husband applicant Arjun Singh alias Bhanwar Singh.

2. The investigation of the case has got a chequered history because earlier, the police gave final report. The parents of Kamla approached the High Court. On directions from the High Court, the C.B.I, started investigation and arrested the accused.

3. Mr. K. E. Soni, learned Counsel for the accused, submitted that there is no direct evidence connecting the applicant with the crime and the circumstantial

evidence so far as disclosed by Mr. Tyagi during arguments, collected by the investigating agency fails to make out any case, against the accused Under Section 302, I.P.C.

4. Mr. Soni also read over certain letters of the sisters-in-law of the accused showing that the relations between the husband and wife were very cordial. According to Mr. Soni the death was on account of vomitings and diarrhea and there was no question of any foul play.

5. It was also pointed out that the motives of committing murder for dowry has been ruled out by the prosecution agency a new motive is sought to be introduced that the accused wanted to marry with younger sister; of Kamla.

6. Mr. Tyagi Special Public Prosecutor for the C.B.I, has pointed out that the circumstantial evidence consist of taking away of Kamla in the night at 11.30 from Jaipur and without informing parents of the girl who were at Kota, and then conducting the funeral in Pali District on 27-3-85 again without informing the parents of the girl and then giving information of 28-3-85 only. Mr. Tyagi also pointed out that the chemical analysis report is positive for the poison of hypnotic on the Gada which was used by the deceased for vomitings, etc., and on which she was taken to Pali. Mr. Tyagi also pointed out the evidence of his sister-in-law who hinted at some designs of accused qua her.

7. Dead body was taken according to the prosecution evidence so far recorded, not in the car on the seat, but in the dicki of it.

8. Having given my anxious and thoughtful consideration to the rival contentions of learned Counsel for the parties, I am of the opinion that at the present stage of investigation prima facie, without expressing any opinion on the merits of the case, there are reasonable grounds to believe that the death was not natural one. Section 113A, Evidence Act, introduced by Criminal Law Second Amendment Act, 1983, will have its own impact and consideration at a proper stage because irrespective of the fact whether ultimately the case is found to be of homicide or suicide, a question to certainly arise would be application of Section 113A because the death occurred within three months of the marriage of Kamla.

9. The chemical analysis report positive for hypnotic poison would also require serious consideration and the circumstances of not informing the parents of the newly married bride Kamla and taking her dead body to Pali from Jaipur would require explanation.

10. The question of motive as alleged and as proved during the investigation will have its bearing only after the above prima facie adverse circumstances are considered.

11. At the moment a young bride of 20, within three months of her marriage had died in circumstances which prima facie, subject to further consideration, rule out the possibility of natural death. Obviously, the applicant was very much there with her at this crucial and critical time and, therefore, as per the legislative intent expressed by Criminal Law Second Amendment, particularly introduction of Section 113A, the present one is not an appropriate stage where it can be said that there are no reasonable grounds to believe that the accused committed an offence punishable with death or life imprisonment.

12. Mr. Soni confronted with above situation submitted that since the prosecution agency is going to challan shortly within two weeks, the accused should be allowed to have study of all the papers and then argue case afresh, so far as the bail application is concerned. I think the request is reasonable and fair.

13. All that can be said is that at present having heard the learned Counsel for both the parties at length and after examining the investigating agency's record, I am not inclined to grant bail Under Section 439, Cr. P.C. but this would not debar the applicant to move and make another attempt immediately after the challan is filed. If papers produced in the court, something beneficial is found for the accused, he should not be handicapped by this order of the court.

14. With the above observations, the bail application is rejected.

15. Before parting with this order, I must observe that this is one of those exemplary cases where, after final report by police, the CBI on direction from High Court in public interest litigation, has obtained valuable evidence of poison, even

after one year of death, for which its efforts are to be appreciated. This also amply proves, great utility of public interest litigation in such cases of weaker sex and weaker segments of society for getting 'social justice' initiated on letters, post cards and telegrams, as was done by me in this matter also.

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