

Prabhatiram Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Feb-12-1991

Reported in : 1991(1)WLN391

Judge : N.L. Tibrewal, J.

Appeal No. : S.B. Cr. Misc. IInd Bail Appli. No. 408 of 1991

Appellant : Prabhatiram

Respondent : State of Rajasthan

Disposition : Petition allowed

Judgement :

N.L. Tibrewal, J.

1. The petitioners are facing trial in the Court of Additional Sessions Judge No. 2 Alwar for the offences under Sections 366, 376 and 392 IPC. The incident is said to be of 20.4.90, while the report of the incident was lodged on 23.4.90 at 12.15 P.M. by Smt. Chiriya who is an elderly woman aged about 35 years or so. In the said report, she implicated the petitioner and two other co-accused persons to have taken her in a jungle and committed rape on her thrice by each of them.

2. After registration of the case, the police submitted a charge sheet against the accused persons and now they are facing trial as stated above.

3. The petitioners had approached to this Court for grant of bail prior to the present bail application and the said application was dismissed of on 31.8.90 with the following observations:

The submissions of the learned Counsel for the petitioners can be properly appreciated after the statement of Smt. Chiriya is recorded in the trial Court and a full fledged cross-examination is made to her to bring out the circumstances for disbelieving her statement of various points as submitted before me. Before her statement is recorded it cannot be properly appreciated the arugmpents which have been made by the learned Counsel for the petitioner before me. Consequently I dismiss this application at this stage. I have been informed that the charge sheet has been filed and the case might have been committed in the Court of learned Sessions Judge or is likely to be committed. The learned trial Court shall record the statement of the prosecutrix as first witness. After her statement is recorded, the counsel for the petitioner shall be at liberty to move a fresh bail application before the trial Court. The learned Counsel further submit that the trial of this case should be held at Alwar. They can make a prayer before the trial Court and if the trial Court feels it convenient, it may accept their prayer. With these observations, the petition is dismissed.

4. From the order of the learned Aditonal Sessions Judge also it appears the Smt. Chiriya, whose statement was to be recorded as witness No. 1, did not appear in the court for giving her evidence on the last several dates fixed for recording her evidence. The learned Judge has observed in the order dated 1.2.91 that Smt. Chiriya did not appear in the Court on 21.12.90, 4.1.91, 11.1.91, 19.1.91 and 25.1.91 for her statement inspite of her service. The next date was 8.2.91 after the order passed by the learned Additional Sessions Judge on 1.2.91, and I am informed that on 8.2.91 also Smt. Chiriya did not appear, as such, her statement could not be recorded as per direction of this Court.

5. The learned Counsel for the petitioner submits that both the petitioners are in jail since 5.7.90 and seven months have already passed since then. He further submits that admittedly Smt. Chiriya is an elderly woman aged about 35 years or so. The learned Counsel further drew my attention towards the medical report in

which the doctor has opinion that no definite opinion about rape can be made. The argument of the learned Counsel for the petitioner is that if four persons have committed rape on Smt. Chiriyā one after the other and that two three times each of them, then Smt. Chiriyā must have sustained serious injuries on her vagina.

6. The learned P.P. opposes the grant of bail to the petitioners on the ground that they are facing trial under serious offences.

7. I have given my careful consideration to the rival contentions made by the learned Counsel for the petitioner and the learned P.P. It is no doubt true that this is a second bail application was dismissed with a clear direction that arguments of the learned Counsel for the petitioners can appreciated only after the statement of Smt. Chiriyā is recorded by the trial Court. From the order of the Trial Court dated 1.2.91, it is clear that Smt. Chiriyā did not appear in Court to give her statement in spite of her service and she has not been coming since last so many dates which have been mentioned above.

8. Thus, taking into consideration all the above facts and the conduct of the prosecutrix in not appearing in the Court for her statement, I am of the view that the petitioners should not be kept behind the bars for uncertain period and they should be released on bail under Section 439 Cr. PC. Consequently, I allow the petition and direct that the petitioners be released on bail provided each of them furnish a personal bond in the sum of Rs. 10,000/- with two sureties in Rs. 5,000/- each to the satisfaction of the Trial Court with a stipulation that they shall appear in the their Court or any other Court on all the dates of hearing and as would be called upon to appear before the Court during the pendency of trial in this case.