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Court : Rajasthan

Decided On : Jul-19-1989

Reported in : 1989WLN(UC)133

Judge : I.S. Israni, J.

Appeal No. : S.B. Cr. Misc. Bail Application No. 1866 of 1989

Appellant : Shiv Ram

Respondent : State of Rajasthan

Advocate for Pet/Ap. : Shri. Jagdeep Dhankar

Disposition : Application dismissed

Judgement :

I.S. Israni, J.

1. This bail application has been filed under Section 439, Cr.P.C. in which the petitioner is charged to have committed offence under Sections 376 & 376(b), IPC.

2. A report was lodged on 23-11-1988 by a citizen of Bangladesh in District Dholpur stating there in that in the camp where Bangladeshi women are lodged, certain police persons posted at the camp, are committing rape on various women. Thereupon, an enquiry was held by SP Dholpur and case was registered. In the

statements recorded under Sections 161 and 164 Cr.P.C. some of the ladies have stated that they were subjected to rape and the petitioner used to supply them to other persons.

3. The contention of Shri Jagdeep Dhankar, learned Counsel for the petitioner is that he is in custody since 23-11-1988 and trial will take long time to complete. It is also pointed out that since the name of petitioner was not mentioned in FIR, it was necessary that test identification parade should have been held. This how ever, has not been done. It is, therefore, prayed that the petitioner be released on bail and a direction should be given by this Court that test identification parade may be held by the trial court. It is also given out that such an application was filed in the trial court which has been rejected.

4. It is contended by Shri Shrimal, learned Additional Government Advocate, that the petitioner is a person who is not only charged to have committed rape but has also supplied the ladies to other persons. He is also charged to have committed under Section 376B, IPC as the women were in custody of the petitioner and other police personnel posted at the camp. He has also opposed the request of the petitioner for direction regarding holding of test identification parade.

5. I have carefully heard the arguments advanced by both the parties. The petitioner is charged to have committed rape not only himself but also supplied the helpless victims to other persons while the women were in his custody during his official duty. It is only desirable that rain witnesses including the ladies must be examined before the question of granting bail to the petitioner can be considered. This application is, therefore, rejected.

6. Learned counsel for the petitioner has relied upon Ramlal Narang v. State (Delhi Admit.) : 1979 CriLJ1346 , regarding the direction for test identification parade. It has been pointed out that under Section 156(3), Cr.P.C. a Magistrate is empowered under Section 190 to order an investigation as mentioned in the provision referred to above. It has been also pointed out that under Section 173(8), Cr.P.C. even after a report under Sub-section (2) of Section 173 has been forwarded to the Magistrate and the officer-in-charge of Police Station obtains further evidence, oral or documentary; he is empowered to forward the same to

the Magistrate a further report regarding such evidence. It is, therefore, contended that even after filing charge-sheet the investigation can continue. In the case of Ramlal Narang (supra) it was held by the Apex Court 'Not with standing that the Magistrate had taken cognizance of the offence upon a Police report submitted under Section 173, Cr.P.C. the right of the Police to further investigation is not exhausted and the Police can exercise such right as necessary when fresh information comes to light Section 173 nor Section 190, Cr.P.C. lead to say that the power of the police to further investigate was exhausted by the Magistrate taking cognizance of the offence'. This authority and the provisions of Cr.P.C. referred by the learned Counsel for the petitioner are of no help to him. There is no doubt that as held by the Apex Court, the power of the Police to further investigate is not: exhausted after filing the charge-sheet and it can exercise the right of investigation of receipt of fresh information. How ever, in this case learned Counsel: prays that a direction may be given by this Court for holding test identification parade. It is for the Investigating Agency to investigate the case in best: possible manner and it will be responsible for consequence or any lacuna in the investigation. The Investigating Agency alone is empowered and expected to carry on the investigation. If such a prayer had been made during the course of investigation, this Court could have taken, in appropriate circumstance, a different view in the matter. The Court shall not adopt the role of Investigating Agency and give direction to the trial court to carry on investigation in the shape of holding test identification parade. The role of the Court is to consider the investigation and the evidence produced before the Court and decide the matter in accordance with law.

7. In the result, the application for the bail as well as the request for holding test identification parade is rejected.

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