

Kedar and anr. Vs. State

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SooperKanoon Citation : sooperkanoon.com/767236

Court : Rajasthan

Decided On : Oct-25-2005

Reported in : RLW2006(1)Raj253; 2006(1)WLC348

Judge : Harbans Lal, J.

Acts : Rajasthan Dacoity Affected Areas Act, 1986 - Sections 3, 5, 9, 10 and 11; [Indian Penal Code \(IPC\), 1860](#) - Sections 216A; [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 439

Appeal No. : S.B. Criminal Misc. Bail Application No. 5889 of 2005

Appellant : Kedar and anr.

Respondent : State

Advocate for Def. : R.P. Kuldeep, Public Prosecutor

Advocate for Pet/Ap. : S.K. Gupta, Adv.

Disposition : Application allowed

Judgement :

Harbans Lal, J.

1. This bail application under Section 439 Cr.P.C. has been filed on behalf of petitioners Kedar and Roop Singh who have been declined bail by the learned

Sessions Judge, Karauli vide order dated 18.10.2005 in FIR No. 169/05 P.S. Masalpur for offence under Section 216-A read with Section 11 of the Rajasthan Dacoity Affected Areas Act, 1986 (here-in-after referred to in short the Act of 1986).

2. Learned counsel for the petitioners has submitted that the offence under Section 216A IPC is bailable. Still the bail has been declined to the petitioners in view of the provisions of Section 11 of the Act of 1980 whereas it has been held in *Bhatta v. State of Rajasthan* 2005 (1) RCC 277 and *Ramdayal v. State of Rajasthan* 2005(2) RCC 908 that where the alleged offence under the Indian Penal Code itself is bailable, the embargo on grant of bail provided under Section 5 of the Act of 1986 would not be applicable.

3. Learned PP also could not controvert this.

4. In order to appreciate and decide the precise controversy involved in this case, it would be pertinent to quote here the provisions of Sections 5, 9 and 11 of the Act of 1986 which read as under:-

Section 5. Regulation of grant of bail-Notwithstanding anything contained in the Code, no person accused or convicted of a scheduled offence shall, if in a custody, be released on bail or on his own bond unless-

(a) the prosecution has been given opportunity to oppose the application for bail; and

(b) where the prosecution opposes the application for bail, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence:-

Provided that a person accused of a scheduled offence, who has been in custody for a total period of one hundred and eighty days, may be released on bail subject to such conditions as the court may think fit to impose.

9. Punishment for offence against public servant-A scheduled offender, who commits the offence of murder of more than one person or a scheduled offence

against a public servant or against a member of the family of a public servant, shall-

(a) if such offence is punishable with death or with imprisonment for life under the Indian Penal Code, 1860 (Central Act XLV of 1860) be awarded such punishment as is provided for that offence in the Code; and

(b) in other cases, be punished with imprisonment which may extend to ten years and with fine.

Explanation-For the purpose of this section and Section 10, a member of the family of a public servant shall mean his parents, spouse, sons and daughters, grants-sons and grand- daughters and great-grand-sons and great-grand-daughters and their spouse and shall include a person dependent on and residing with such public servant.

11. Punishment for scheduled offences generally-A person who commits a scheduled offence shall, if no specific punishment is provided for that in the Indian Penal Code, 1860 (Central Act XLV of 1860) and that offence is also not punishable under Section 9, be punished with imprisonment which may extend to ten years and with fine.

5. But the offence under Section 216A IPC which is as per the Schedule I appended to the Code of Criminal Procedure, 1973 is a bailable offence and specific punishment has been provided for the same. It has been held in the case of *Shriya v. State* 1989 RCC 189 that the provisions of Section 5 of the Act of 1986 do not place any restriction on grant of bail to the accused in bailable offence in dacoity affected areas notified by the State Government under Section 3 of the Act of 1986 even though the same may be 'schedule offence'. The same view has been reiterated in the cases of *Bhatta v. State of Rajasthan* (supra) and *Ramdayal v. State of Rajasthan* (supra) referred to above.

6. Thus, the learned court below has not considered the relevant provisions in the right perspective and has declined bail to the petitioners as they were alleged to have committed the offence Under Section 216A IPC read with Section 11 of the

Act of 1986. Section 11 makes provisions for punishment for 'scheduled offences' where no such specific punishment has been provided in the Indian Penal Code, 1860 or under Section 9 of the Act of 1986. It provides imprisonment for such offences which may extend to ten years and fine.

7. Since Section 216-A IPC already provides punishment of rigorous imprisonment for a term which may extend to seven years and fine, the provisions of Section 11 of the Act of 1986 are not attracted to the instant case.

8. Thus, having carefully considered the submissions made at the bar and keeping in view the law laid down by this court in the aforesaid cases and the alleged offence under Section 216-A IPC being bailable, the petitioners are entitled to grant of bail in this case.

9. In the result, this bail application under Section 439 Cr.P.C. is allowed and it is directed that petitioners Kedar s/o Lohare and Roopsingh s/o Lohare shall be released on bail on each of them furnishing a personal bond in the sum of Rs. 20,000/-together with one surety in the like amount to the satisfaction of the concerned court undertaking to appear before that court on all dates of hearing until conclusion of the trial.