

Sandeep Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Dec-07-2007

Reported in : I(2008)DMC613

Judge : Raghuvendra S. Rathore, J.

Appellant : Sandeep

Respondent : State of Rajasthan

Disposition : Application dismissed

Judgement :

ORDER

Raghuvendra S. Rathore, J.

1. Heard learned Counsel for the petitioner, learned Public Prosecutor for State and also perused the material on record as well as the impugned order dated 30.10.2007 passed by the learned Court below.

2. This bail application has been filed by the petitioner/husband under Section 438, Cr.P.C. in First Information Report No. 33/2007 registered at Police Station, Aklera, District, Jhalawar for the offence under Section 304B, IPC.

3. Learned Counsel for the petitioner has submitted that there are no allegations against the petitioner and the other co-accused persons have been released on

bail. He has also submitted that earlier a compromise had been entered into between the parties wherein the deceased have dictated the terms which were accepted. He has referred to the provisions of Section 304B, IPC, and the explanation appended to it. With reference to Section 2 of the Dowry Prohibition Act, the learned Counsel for the petitioner has submitted that the offence of dowry death is not attracted in a case of love marriage, as had been solemnized in the present case between the deceased and the petitioner. Learned Counsel for the petitioner has placed reliance upon the case of Satveer Singh and Ors. v. State of Punjab IV : 2001 CriLJ4625 and the case of Lata Singh v. State of U.P. : 2006 CriLJ3309 .

4. On the other hand, the learned Public Prosecutor has submitted that a bare perusal of the compromise itself, as reproduced by the petitioner in his petition, goes to show that there were strained relations between the parties and the same were entered into to resolve the dispute with regard to dowry. The learned Public Prosecutor has further submitted that the instant case is not one of purely love marriage but, in fact, the customary marriage was also solemnized in the present case on the occasion of 'Dev Uthni Gyaras'. In this reference, the learned Public Prosecutor has read before me the statements of Suresh Chand, Smt. Sarita Devi, Indra Kumar, Smt. Gopali Bai, Golu and Smt. Dhapu. The learned Public Prosecutor has also submitted that the death of the deceased was an unnatural one and in this context, he has invited the attention of the Court to the post-mortem report wherein mention has been made with regard to ligature mark on the left side of the neck of the deceased and the cause of death being asphyxia.

5. Apart from referring to the statements of the witnesses who are the neighbours like Mohan Singh, etc. to show that the deceased was met with torture and harassment, the learned Public Prosecutor has also submitted that the deceased had died in the house of the petitioner. The learned Public Prosecutor has also relied upon the cases of Kamesh Panjiyar v. State of Bihar : 2005 CriLJ1418 , Smt Shanti and Ors. v. State of Haryana : 1991 CriLJ1713 and Kans Raj v. State of Punjab and Ors. : 2000 CriLJ2993 .

6. I have given my thoughtful consideration to the rival submissions made by the learned Counsel for the parties. This Court had also called for the case diary and perused the same. The evidence collected by the police during the course of investigation, includes the suicide note which was seized by the police from underneath the cloths worn by the deceased, on 3.2.2007 at 9.55 a.m. A reference of this suicide note has also been made in the 'Panchnama' prepared by the Investigating Agency. In the said suicide note, the deceased had expressed about the harassment caused by the in-laws, and as a result of which she is said to have committed suicide.

7. Without expressing any opinion on the merits of the case but taking into consideration the overall facts and circumstances as well as the material available in the case diary, it cannot be said that the petitioner/husband has no connection with the commission of crime or that the instant case has been falsely lodged against him. The power exercisable under Section 438 Cr.P.C., is extraordinary in character and the same is to be exercised only in exceptional cases where it appears that the person may be falsely implicated. Therefore, in my considered opinion, the present case is not a fit one from grant of indulgence of anticipatory bail to the accused petitioner.

8. Hence, the present application for bail under Section 438, Cr.P.C, is dismissed.

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