

Vidya Devi Vs. State

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Court : Delhi

Decided On : Nov-12-2014

Judge : V.P.Vaish

Appellant : Vidya Devi

Respondent : State

Judgement :

§~10 & 11 * IN THE HIGH COURT OF DELHI AT NEW DELHI Date of decision:

12. h November, 2014 % + BAIL APPLN. 2107/2014 ATTAR SINGH Through: Petitioner Mr. Pradeep Arya with Mr. Narinder Chaudhary and Mr. Praveen Dabas, Advocates. versus STATE Through: + Respondent Mr. Navin Sharma, APP for the State. BAIL APPLN. 2108/2014 VIDYA DEVI Through: Petitioner Mr. Pradeep Arya with Mr. Narinder Chaudhary and Mr. Praveen Dabas, Advocates. versus STATE Through: Respondent Mr. Navin Sharma, APP for the State. CORAM: HON'BLE MR. JUSTICE V.P.VAISH VED PRAKASH VAISH, J.

(ORAL) These two applications filed under Section 438 of Code of Criminal Procedure, 1973 (hereinafter referred as Cr.P.C.) on behalf of the applicants who seek anticipatory bail in case FIR No.247/2014 under Sections 302/34 IPC registered at P.S. Kanjhawala, Delhi. Since both these applications are arising out of the same FIR, these are being taken up together for disposal. Learned counsel for the applicants submits that the applicants have been falsely implicated in this

case, no specific role has been assigned to the applicants and no specific injury has been attributed to the applicants in the FIR. He further submits that applicant Attar Singh is an old person and is a cancer patient. Learned counsel for the applicants also submits that applicant Smt. Vidya Devi is not named in the FIR and she has been falsely implicated and her name was introduced in the FIR later on. He also submits that the incident is alleged to have taken place at 1:30 a.m. in the mid night whereas the FIR was lodged at about 10:00 a.m., therefore, there is an unexplained delay of about 8 hours. Learned counsel for the petitioner has relied upon judgments in Sonu vs. State (NCT of Delhi), 2009 (4) JCC2628 and Dinesh vs. State, 1995 JCC569 Per contra, learned APP for the State urges that the deceased was more than 80 years. The applicants and co-accused Rakesh and Vinod who are sons of the applicant gave him beatings. He has also pointed out that one day prior there were heated arguments between the deceased and Attar Singh and his two sons gave death threats to his father. The factual matrix of the case as set out in the FIR are that on 30.03.2014 complainant Jay Singh, who is son of the deceased, lodged a report that at about 1:30 a.m. in the intervening night of 29/30.03.2014 when he was sleeping at his house he heard some voices from outside his house. After hearing them he went outside and saw that Attar Singh (applicant) and his sons Rakesh and Vinod @ Meenu were beating his father on the street near the drain. When he reached there to protect his father they pushed him and ran away, he fell down on the street and started shouting in anxiousness, hearing which his sons Naveen and Amit also came at the place of incident and took their grandfather inside the house. He also stated that at night due to anxiousness he did not inform the police. In the morning at about 7:30 a.m. when he went to his fathers room he saw blood on the face of his father, his upper clothes were torn, his clothes had blood stains on them and he was lying dead. Thereafter, the matter was reported to the police. He has also stated that Rakesh son of applicant Attar Singh used to come to his fathers room for drinking alcohol but his father always restricted him from coming to his room. The complainant and his father also informed about the same to the applicant Attar Singh hearing which Rakesh and his family fought with them. On 29.03.2014 his father had heated arguments with the applicant and his two sons who gave him death threats saying that he has defamed their family. I have carefully considered the submissions

made by learned counsel for the applicants and learned APP for the State. The judgments relied upon by learned counsel for the petitioner are not applicable to the facts of this case. It is settled rule of law that while considering an application for anticipatory bail, the considerations which should weigh with the Court need not be the same as for an application for release on bail after arrest. The application under Section 438 and 439 of Cr.P.C. operate in different fields. The parameters for grant of anticipatory bail are highlighted by the Apex Court in Parvinderjit Singh and Anr. vs. State (Union Territory Chandigarh) and Anr., (2008) 13 SCC431 in para 9 and 10 of the judgment wherein it was observed as under:

9. It is clear from a bare reading of the provisions that for making an application in terms of Section 439 of the Code a person has to be in custody. Section 438 of the Code deals with direction for grant of bail to person apprehending arrest.

10. In *Salauddin Abdulsamad Shaikh v. State of Maharashtra* it was observed as follows:

2. ... Anticipatory bail is granted in anticipation of arrest in non-bailable cases, but that does not mean that the regular court, which is to try the offender, is sought to be bypassed and that is the reason why the High Court very rightly fixed the outer date for the continuance of the bail and on the date of its expiry directed the petitioner to move the regular court for bail. That is the correct procedure to follow because it must be realised that when the Court of Session or the High Court is granting anticipatory bail, it is granted at a stage when the investigation is incomplete and, therefore, it is not informed about the nature of evidence against the alleged offender. It is, therefore, necessary that such anticipatory bail orders should be of a limited duration only and ordinarily on the expiry of that duration or extended duration the court granting anticipatory bail should leave it to the regular court to deal with the matter on an appreciation of evidence placed before it after the investigation has made progress or the charge-sheet is submitted.

In another case *State represented by the CBI vs. Anil Sharma*, (1997) 7 SCC187 it was held that effective investigation of the suspect is of tremendous advantage in disinterring useful information and also material which would have been concealed. Success in such interrogation would elude if the suspected person

knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. In the instant case, complainant Jai Singh, who is son of the deceased lodged a report. The complainant has mentioned in the report that he saw applicant Attar Singh as well as accused Rakesh and Vinod were giving beating to their father (deceased). The deceased was extremely an old and infirm person. He was aged about 80 years. The cause of death has been opined as asphyxia as a result of aspiration pneumonites in a person with fatty liver, esophageal varices & damage for abdominal structures consequent to blunt force impact by object as alleged. All the injuries were ante mortem in nature. As regards delay in lodging FIR it may be mentioned that the complainant has stated that after incident the deceased was taken inside the house where he slept and in the morning at about 7:30 a.m. when the complainant went to his fathers room, he found him dead. Moreover, the delay in lodging the FIR cannot be pre-judged at this stage. As per status report during investigation statement of individual witnesses namely Smt. Dharamo and Kamla under Section 161 Cr.P.C. have been recorded who stated that the applicant Smt. Vidya Devi instigated applicant Attar Singh and her two sons Vinod and Rakesh to give beatings to the deceased. Considering in totality the facts and circumstances of the case and the allegations against the applicants, the applicants are not entitled to anticipatory bail. Accordingly, both the applications are dismissed. Before parting with the order, it may be mentioned that it has come to notice of this Court that the co-accused Rakesh and Vinod were released on bail due to non-filing of the charge-sheet within statutory period. The accused persons are charged with serious offence of murder and non-filing of charge-sheet in such heinous offence is a matter of serious concern. It also reflects insensitiveness and callous approach not only on the part of the investigating officer but also on the part of the concerned SHO, who also failed to supervise the investigation. It is needless to mention here that the SHO is the Chief Investigating Officer of a police station and it is his primary duty to supervise the investigation and to ensure that at least in serious offences like murder, etc. investigation is completed at the earliest. Accused should not take benefit of statutory bail due to default on the part of the investigating agency for not filing of charge-sheet within the statutory period. Hence, the Commissioner of

Police, Delhi is directed to hold departmental inquiry against the concerned SHO and Investigating Officer within a period of four weeks and to submit report in this regard before this Court. Renotify on 23.12.2014. (VED PRAKASH VAISH)
JUDGE NOVEMBER12 2014 hs

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