

Ravish Kumar Vs. State of H.P.

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Court : Himachal Pradesh

Decided On : Dec-14-2001

Reported in : 2002CriLJ1760

Judge : Kuldip Chand Sood, J.

Acts : Evidence Act - Section 27; ;Code of Criminal Procedure (CrPC) , 1974 - Section 438, 438(1) and 438(2) ; ;Indian Penal Code (IPC) - Sections 201 and 302

Appeal No. : Cr. M.P. (M) No. 1359 of 2001

Appellant : Ravish Kumar

Respondent : State of H.P.

Advocate for Def. : Sandeep Kaushik, A.A.G.

Advocate for Pet/Ap. : T.R. Chandel, Adv.

Judgement :

ORDER

Kuldip Chand Sood, J.

1. Ravish Kumar, the petitioner herein, prays for anticipatory bail under Section 438 of the Code of Criminal Procedure in case registered with the Police Station, Reckong Peo on 19-11-2001, for offences punishable under Sections 302 and 201

of the Indian Penal Code in terms of FIR No. 56 of 2001.

2. It appears, on the afternoon of 19th Nov. 2001 Naresh Kumar, Head Master of Government Middle School, Kothi, was informed about a dead body lying in the unused septic tank of the School. He inturn informed Harish Chand Negi, President of Gram Panchayat, Kothi, on telephone, about this discovery. Harish Chand reported the matter to the Police at about 4.40 PM on the same day. The Station House Officer, Rockong Pee along with other police officials immediately visited the spot. He found that a dead body, covered with refuse, with legs protuding was lying in the septic tank. The dead body, after taking photographs, was taken out of the septic tank. The clothes worn by the body were soiled with blood. There was an injury of 2 to 2 1/2 inch on the left cheek. The body was identified to be that of Sanjeev Kumar by Vidya Singh his father. Post mortem of the dead body was conducted by Dr. G.K. Sharma and Dr. Subhash Chand, Medical Officers, Tehsil Hospital, Reckong Pee. The body had multiple fracture of left side of mandible, maxilla and left zygounaltic bone and nasal bone. The Doctors also found that base of skull of the left side involving middle cranial fora, cribriform plate ethmoid and speneri bone was fractured with laceration of underlying meninges and brain matter with surrounding haemetoma. In the opinion of the Doctors the deceased 'died due to the head injury', the opinion was subject to the report of the Chemical Analysis of the viscera and blood.

3. During the course of the investigation it was found that Ravish Kumar, the petitioner, was missing from the village from 19th Nov. 2001.

4. According to the petitioner, he is being falsely implicated with the murder of Sanjeev Kumar by his enemies. He pleaded that it is not certain that the death was homicidal or accidental. The deceased, according to him, was given to heavy drinking. The petitioner had no motive to kill Sanjeev Kumar who was 'his fast friend'. It is his case that there is no material with the police to connect him with the commission of the murder of Sanjeev Kumar.

5. In reply filed on behalf of the State, the allegations are controverted. It is submitted that the investigation so far connect the petitioner with the killing of Sanjeev Kumar. The police had been searching for the petitioner since 21st Nov.

2001, but he was absconding. It is the case of the Investigating Agency that material so far collected indicates that the petitioner is involved in the offence punishable under Section 302 and 201 of the Indian Penal Code.

6. I have heard Mr. T.R. Chandel, learned counsel for the petitioner and Mr. Sandeep Kaushik, learned Assistant Advocate General for the respondent-State and have also perused the police record including police diaries.

7. The investigation so far shows that accused-petitioner and Sanjeev Kumar together took liquor on the evening of 18th Nov. 2001 in a 'Dhaba' of Jawahar Lal. Thereafter they left 'Dhaba' and consumed the remaining liquor somewhere else. At about 7.00 p.m. accused-petitioner along with deceased again visited the 'Dhaba' and took liquor in the 'Dhaba' up to 8.00 p.m. However, a beat Constable intercepted them taking liquor in the 'Dhaba' He asked both of them to leave the place immediately. The Constable reprimanded them and the 'Dhaba' owner for this unlawful activity. Thereafter both deceased and the petitioner went to the house of Constable Das Raj who happened to be relative of petitioner Ravish Kumar. Ravish Kumar demanded liquor from Das Raj. Des Raj informed him that he had no liquor, however, he gave him Rs. 100/- to get a bottle of liquor. Both deceased and petitioner brought country liquor from the market and consumed it in the room of Des Rej. Des Raj also part (sic) took liquor. Both petitioner and deceased together left the house of Des Raj at about 10.00 p.m. or 10.30 p.m. for their village at Kothi. On the next day petitioner left village Kothi, came to Shimla and went to Delhi. According to police, the death could not be accidental as the dead body of the deceased was found in the septic tank, camouflaged under the waste material. The septic tank is far away from footpath leading to village Kothi and therefore, the presence of the dead body in a septic tank far away from the footpath rules out accidental death.

8. Learned Assistant Advocate General contends that the circumstances show that the deceased was killed and thereafter dragged to the spot and dumped in the septic tank which was lying unused. He also submits that there were blood stained stones lying on the path. The police also discovered a jute bag from the spot soiled with blood. The house of the accused is about 30 meters from the spot. Mr.

Kaushik urges that the fact that the petitioner accused was absconding from his village from the very day the dead body was discovered is a circumstances indicated involvement of the petitioner with the commission of the murder of Sanjeev Kumar particularly when he knew that dead body of Sanjeev Kumar has been discovered.

9. Mr. Chandel submits that only material collected by the police against the petitioner -accused is; (a) deceased was last seen in the company of the accused-petitioner, (b) petitioner was not available in his village from the date dead body was discovered. This material, submits Mr. Chandel, is not sufficient to connect the accused with the commission of the offence. He further submits that deceased and accused were fast friends and therefore, there was no motive or reason for the petitioner accused to have killed deceased Sanjeev Kumar.

10. Mr. Chandel refers to Gurbaksh Singh Sibbia v. The State of Punjab AIR 1980 SC 1632 : 1980 Cri LJ 1125 and submits that power of the Court under Section 438 of the Code of Criminal Procedure is discretionary, unfettered and unconstrained. The Court would be within its jurisdiction to grant anticipatory bail to protect the liberty of citizen even if a case for the police custody of the accused is made out by the Investigating Agency. He submits that this decision of the Constitutional Bench still hold the fields.

11. In Gurbaksh Singh Sibbia an argument was raised that power under Section 438 of the Code should not be exercised if the Investigating Agency can take a reasonable claim that it can secure incriminating material from information likely to be received from the offender under Section 27 of the Evidence Act. Repelling the contention, the Constitution Bench observed that while giving relief under Section 438(1) of the Code appropriate conditions can be imposed under Section 438(2) so as to ensure an uninterrupted investigation. 'One of such conditions can even be that in the event of the police making out a case of a likely discovery under Section 27 of the Evidence Act, the person released on bail shall be liable to be taken in police custody for facilitating the discovery and if occasion so arises, it may be possible for the prosecution to claim the benefit of Section 27 of the Evidence Act in regard to a discovery of facts made in pursuance of information supplied by a

person released on bail by invoking the principle as stated in State of U.P. v. Deoman Upadhyaya AIR 1860 SC 1125 : 1960 Cri LJ 1504. The Constitution Bench observed that there cannot be a straitjacket rule or formula in the matter of granting or rejecting anticipatory bail.

The facts and circumstances of each case will govern the exercise of judicial discretion (See : Gurcharan Singh v. State (Delhi Administration) (1978) 1 SCC 118 : 1978 Cri LJ 129 There are several considerations which must weigh with the Court while granting or rejecting anticipatory bail. One of such consideration is the nature and seriousness of the proposed charges. The other consideration which cannot be ignored is 'the larger interests of public and the State.

12. Constitution Bench observed :

No hard and fast rules can be laid down in discretionary matters like the grant or refusal of the bail, whether anticipatory or otherwise. No such rules can be laid down for the simple reason that a circumstance which, in a given case, turns out to be conclusive, may have no more than ordinary significance in other case.

13. Mr. Chandel refers to Prem Thakur v. State of Punjab 1983 SC 61 : 1983 Cri LJ 155 and submits that mere fact that the accused was not available in his village and fled away after the occurrence would not connect him with the commission of murder of deceased Sanjeev Kumar.

14. Mr. Chandel refers to Pandru Khadia v. State of Orissa 1992 Cri LJ 762 and Jarnail Singh v. State of Haryana 1993 Cri LJ 1656 : 1993 AIR SCW 766 and submits that if the case is based on circumstantial evidence then absence of motive becomes important. In the present case there was no motive for the petitioner to have killed Sanjeev Kumar, therefore, this material against the petitioner is of no consequence.

15. In my view of the contention of the learned counsel has no force. Presently the investigation is at an initial stage. The evidence is as yet to be collected. It has to be remembered that accused petitioner, even after knowing about the discovery of dead body of his, in his own words, 'best friend' on 19th Nov. 2001 chose to fled

away from the village to Delhi and made himself unavailable for interrogation by the police. At this initial stage of the investigation it cannot be said that accused has committed no crime or he is innocent.

16. Mr. Chandel referring to Dr. Jasbir Kaur v. State of Punjab 1998 (4) All India CrL LR 338 and Molak Ram v. State of M.P. 1996 (2) All India CrL LR 485, submits that gravity of offence alleged should not be an impediment for the grant of anticipatory bail.

17. In Jasbir Kaur learned single Judge of the High Court found from the record that the story put forth by the police was improbable. The complaint was filed by the father of the deceased after three months of the alleged occurrence and there was no medical evidence on record regarding the death of the deceased.

18. In Molak Ram the learned Judge, taking into consideration several factors which should weigh with the Court while considering the application, took a view that as the evidence of the eye witnesses has been recorded and only report of the Chemical Examiner was awaited and therefore, the petitioner could be enlarged on anticipatory bail, keeping in view the age and extent of participation of the applicant in the commission of offence in the facts of that case. The ratio of these two cases is of no assistance to the petitioner.

19. Mr. Sandeep Kaushik, learned Assistant Advocate General, submits that custodial interrogation of the accused is necessary as petitioner alone was in the company of the deceased at about 10.30 in the night immediately before his death. He further submits that the very fact that the accused-petitioner in spite of the knowledge of Sanjeev Kumar having been killed chose to leave the village for Delhi making himself unavailable in spite of his father having sent a messenger to Delhi to bring the petitioner. He submits that despite the efforts by the father of the petitioner, the petitioner did not join investigation, he rather chose to approach this Court for the grant of anticipatory bail which indicates his guilty mind. The contention is well founded. In my view custodial interrogation of the petitioner is necessary for effective investigation of this case.

20. In State Rep. by the CBI v. Anil Sharma (1997) 7 SCC 187 : 1987 Cri LJ 4414 the Apex Court observed at page 4415-4416; of Cri LJ :

Custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 of the Code. In a case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful informations and also materials 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. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible police officers would conduct themselves in a responsible manner and that those entrusted with the - task of disinterring offences would not conduct themselves as offenders.

21. In the present case, the investigation has hardly commenced the circumstances of the case and the material so far collected indicate grave suspicion of the involvement of the accused-petitioner with the death of deceased Sanjeev Kumar. The Court while considering anticipatory bail, has to weigh the personal liberty of the petitioner on one hand and the interest of the investigation, in the larger public interest on the other. Personal liberty of a citizen, in my: view, must yield to fair and effective investigation of a heinous offence of murder.

22. Taking into consideration the entirety to the circumstances, I am of the view that custodial interrogation of the petitioner is necessary in the interest of the effective investigation of the case.

23. Mr. Chandel submits that pursuant to the direction of this Court, petitioner joined the investigation but he was subjected to third degree method and was made to stand in pail of cold water for one hour. The petitioner in this background, apprehends torture in the hands, of the Investigating Agency. He submits that affidavit to this effect has been filed in the Registry of this Court. Learned Assistant

Advocate General admits having received copy of such affidavit. In the facts and circumstances, I direct that immediately on the arrest of the applicant he shall be medically examined by a team of two doctors and shall be continued to be so examined everyday till he remains in police custody. The petitioner shall be at liberty to approach the Court in case of any physical torture.

24. The petition is, accordingly, disposed of.

25. Needless to say that any observation made hereinabove shall not be considered to be any observation on the merits of the case.

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