

Kashmir Singh Etc. Vs. State

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Court : Jammu and Kashmir

Decided On : Jun-02-1994

Reported in : 1994CriLJ3327

Judge : M.L. Koul, J.

Acts : Jammu and Kashmir Code of Criminal Procedure (CrPC) , 1989 - Sections 497A and 498; ;Ranbir Penal Code (IPC), 1989 - Section 307

Appeal No. : Bail 26/1994

Appellant : Kashmir Singh Etc.

Respondent : State

Advocate for Def. : Seema Shekhar, GA

Advocate for Pet/Ap. : M.A. Goni, Adv.

Disposition : Application dismissed

Judgement :

ORDER

M.L. Koul, J.

1. These two bail applications, one moved on behalf of accused Anant Ram, Mst. Beeru and Sohan Singh for grant of bail under Section 498 Cr.P.C. and another on

behalf of Kasmir Singh for anticipatory bail under Section 497 A Cr.P.C. in the event of his arrest, have arisen out of the facts of the case that the victim Smt. Sudesh Kumari made a report with the police with partly her head, forehead, face and back burnt, that on the eventful day i.e. 15-4-1994 at about 5 p.m., while she was unwell and asleep in her house her father-in-law, mother-in-law and brother-in-law threw some cold liquid on her face, due to which she immediately woke up and found that all the three accused Anant Ram, Mst. Beeru and Kashmir Singh were standing by the side of her Cot. Mst. Beeru holding a match box in her hand lit a match stick and threw it on her head, and thereafter they ran away. She with her own hands tried hurriedly to put out the flames, but in vain. On this she rushed out of her house and cried for help, when two neighbours Mst. Kunto & Baldev Singh rushed in her compound where her father-in-law was present, but was standing as a spectator. In the meanwhile, her brother-in-law who was standing there also rushed and instead of expressing sympathy started beating her with fists and blows and he chased his neighbours who had come to her help. It was also contended in the report that the petitioners had been treating her with physical and mental cruelty by telling on her face that she is ugly and is not bearing any child and were forcing her to bring Rs. 10,000/- for construction of a separate room for her. The parents of her husband had duly proclaimed that they would re-marry their son and would eliminate the victim.

2. In this regard, the accused persons had moved a bail application before the learned Sessions Judge, Kathua, who dismissed the same while holding that if the accused persons who are involved in such a serious offence against society are released by the Court on the mere asking of bail, then the other persons may be inspired to think that even if they are arrested in such offences, the Courts are there to release them on bail.

3. The present application for grant of bail under Section 498 Cr.P.C. is moved by the arrested accused on the ground that the victim Smt. Sudesh Kumari was married to Sohan Singh some five years back and she had not collectively spent more than three months in the petitioners house. That on 15-4-, 1994 all the petitioners including Kashmira Singh had gone out to attend a marriage in an adjoining village which is at a distance of 5 Kms. from their house, when Smt.

Sudesh Kumari attempted to commit suicide by pouring kerosene oil upon herself. This act was done by Sudesh Kumari with a purpose to implicate the petitioners and aforementioned Kashmira Singh in a criminal charge. On their return, they found Smt. Sudesh Kumari with some burn injuries on her person, which were treated at home by the petitioners. Next day i.e. 16-4-1994, Sohan Singh petitioner No. 3 went to victim's parental house and made a complaint about her conduct. Thereupon, the victim with the intervention of her brother lodged a false report with the Police Station, Hiranagar. She remained in the hospital for a few days, and was discharged from the hospital after treatment. That the petitioners are law abiding citizens and undertake to abide by all the conditions to be imposed by this Court in case of exercise of discretion in their favour by granting concession of bail to them.

4. Objection have been filed by the respondent-State. The bail application has been resisted on the ground that the accused having committed a serious offence, which is not only an offence against an individual but against the society at large. There is ample evidence to substantiate the offence under Section 307 RPC against the accused. In the event of their releasing on bail, they are likely to jump the same and influence the witnesses, thereby hamper the course of justice. The bail application therefore merits rejection on this score at the very outset. The story put forth by the accused that the victim had attempted to commit suicide to avenge the accused persons, is, false and is not borne out from any record at the moment, and such a plea raised by the petitioners can be put at rest at the very outset by holding that prima facie offence within the purview of Section 307 RPC has been committed by the accused persons.

5. Heard learned counsel for the parties, and also bestowed my thoughtful consideration over the record on the file. Mr. Goni learned counsel for the petitioners-accused during the course of arguments, filed a copy of the Medical report furnished by a Doctor, which, inter alia, states that there were superficial burns on the scalp of the victim Sudesh Kumari, and her forehead and other parts were also affected. Accordingly to the Doctor, she was under the medical treatment from 16-4-1994 to 20-4-1994, and as her condition was satisfactory after that, she was discharged from the hospital. There were 4% superficial burns on

her face. No doubt, the certificate furnished by the Doctor in no manner envisages that there were serious burn injuries sustained by the victim on the basis of which, prima facie one can say that the injuries so sustained by her were so serious that after the trial of the accused, the accused will be liable to be punished for an offence under Section 307 RPC. In such bride burning cases at the outset before filing of the charge-sheet in the Court, the prosecution is not required to provide positive proof for commission of such a crime against an accused on the basis of which he on trial can be convicted. They have to show prima facie that the accused is connected with the commission of such a crime for which he can be put to charge to face a trial. The bride burning cases for want of dowry are to be looked in the larger interests of the society, giving an idea to the people that the people who try to burn brides for want of dowry can be dealt with in accordance with law by the Courts and no liberal attitude is shown to them with regard to the grant of bail unless it is found that they are not involved in an offence of burning of a lady or in an attempt to burn her for want of dowry.

6. The counter story put forth by the accused that the victim had tried to commit suicide of her own in order to take revenge upon the petitioners, who were asking her as to why she didn't stay in their house for more than three months in a span of five years after her marriage, proves that the relationship between the parties was not cordial. In this way, the story of the victim that she was being harassed by her in-laws for being ugly and not having brought Rs. 10,000/- for construction of a separate room for her is, prima facie, accepted by them to be correct. At this stage, this Court is not supposed to devolve upon the medical evidence collected in the case and same can be taken into consideration by the Sessions Judge at the time the evidence collected by the prosecution is discussed for the purpose of charge and discharge of the accused before him.

7. The learned counsel for the petitioners referred to 1984 Cri App R 111 : (1984 Cri LJ 160)(SC). In that case, the Sessions Judge had granted bail and the learned single Judge of the High Court cancelled it holding that when a prima facie case was established, the bail should have not been granted by the Sessions Court. The Supreme Court while disagreeing with the High Court observed that even where a prima facie case is established, the accused should not be detained

by way of punishment. It further held that High Court had completely overlooked the fact that it was not for it to decide whether the bail should be granted, when the application before it was for cancellation of bail. Very cogent and overwhelming circumstances are necessary to be shown by an aggrieved party seeking cancellation of bail. In the present case, the bail has already been refused by the learned Sessions Judge and no fresh facts have been brought before this Court for consideration, on the basis of which bail can be granted to the accused-petitioners. One of the petitioners- accused is still evading arrest i.e. Kashmir Singh who is the main participant in the commission of crime and is at large. The investigation against him is not yet complete, that being so, no fresh material has come up before this Court, upon consideration where of the Court could find out that there are sufficient grounds for grant of bail in favour of the accused persons. No doubt, the trend of the Courts now-a-days is to grant bail and there are catena of authorities of the Supreme Court that the power to grant bail is not to be exercised in such manner as if punishment before trial is being imposed. But such discretion is scarcely being exercised in dowry death cases, which have created havoc in the society and the bail is granted only, when it is found that the accused who seeks bail is in no manner connected with the commission of such crime.

8. At the moment, prima facie it is found that kerosene oil was thrown upon the victim by the accused persons and thereafter she was set on fire. Due to timely intervention of some persons, she was saved, and the injuries so sustained by her were not of a serious nature. This fact will be taken into consideration by the trial judge at the time the challan is filed against the accused, and arguments are advanced in his Court for charge/discharge of the accused persons. Therefore, I am not satisfied in any manner on any of the grounds to grant bail to the accused persons at present. The accused shall, however, be at liberty to move a fresh application before the learned Sessions Judge after the challan is filed against them for trial.

9. As such, both the applications for bail being without any substance are rejected.