

Zareefa Vs. State

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Court : Jammu and Kashmir

Decided On : Jun-03-2004

Reported in : 2004CriLJ4088

Judge : Syed Bashir-Ud-Din, J.

Acts : Jammu and Kashmir Code of Criminal Procedure (CrPC) , 1989 Smvt. - Sections 497 and 498; ;Code of Criminal Procedure (CrPC) , 1974 - Section 439

Appeal No. : Cr. Revn. No. 25 of 2003

Appellant : Zareefa

Respondent : State

Advocate for Def. : T. Khawja, G.A.

Advocate for Pet/Ap. : A.R. Bhat, Adv.

Judgement :

ORDER

Syed Bashir-Ud-Din, J.

1. The order dated 1-11-2003 of District and Sessions Judge, Baramulla on file No. 168 (Misc)/2003 rejecting bail application of Zareefa Begum accused in FIR 18/2002 under Section 302 read with Section 34, RPC registered at Police Station,

Uri, is under challenge in this revision petition.

2. Alam Jan, Zareefa, Sona Begum, Maroofa and Khatooni are facing trial in the above FIR for alleged commission of offence under Section 302 read with Section 34 of RPC in connection with homicidal death amounting to murder of one Sameeda Begum. The case is being tried by District and Sessions Judge, Baramulla. The prosecution evidence is being recorded. Mst. Maroofa and Mst. Khatooni were given interim bail which was subsequently made absolute by order dated 14-7-2003. The bail application of Alam Jan, Zareefa Begum and Sona Begum has been rejected by the very order of 14-7-2003. Zareefa Begum moved a second application for bail, that too has been rejected on 1-11-2003.

3. Though it is alleged that the evidence which has come on record during trial is suggestive of the circumstance that no reasonable ground appear for believing that Zareefa Begum is guilty of the offence under Section 302 read with Section 34, RPC after she is charged, the learned Counsel for the petitioner has made two fold submissions for this female accused of advance age. If not in a better position but equally circumstanced and identically placed with the other two female accused, who have been granted bail in exercise of powers under Section 497, Cr.P.C. on the ground that the applicants were women and sick, Zareefa is prayed to be released on bail. There are no chances of her absconding or not appearing in Court. Besides in the context of human and humane aspect of the applicant/accused's case, it is solicited that she is mother of minor children who need her love, care and affection. Her deteriorating health conditions too cannot be lost sight of when bail plea is considered by Court. Though Mr. T. Khawaja has not filed any objection to this application, but the learned counsel has opposed the bail on the ground that the accused applicant even though a woman and may be sick, is not entitled to bail as a matter of right and when the trial Court has dismissed her application for bail. The revisional court should not release her too.

4. Record is examined and matter considered.

5. The normal rule is that in non-bailable offences, bail is to be refused, subject to first proviso of Section 497(1) of Cr.P.C. which reads as under :--

'Provided that the Court may direct that any person under the age of sixteen years or any woman or any sick or infirm person accused of such an offence be released on bail.'

6. A person accused of non-bailable offence is not to be released on bail if there appear reasonable grounds for believing that such person is guilty of an offence punishable with death or imprisonment for life. The exception to this rule is where the Court may exercise discretion in admitting an accused to bail in a case where such accused is below 16 years of age or is a woman or sick or infirm person.

7. Section 498 says that the High Court or Court of Session may direct any person to be admitted to bail, without prescribing any condition or rider for grant of bail. However, both provisions included in Chapter 39 providing for bail have to be read conjointly. Though the powers of bail are unlimited, but they have to be taken as hedged by the condition that in the event reasonable grounds do exist for believing a person guilty of the offence(s) punishable with death or life imprisonment, such person cannot be admitted to bail, provided the Court may grant bail to such person, if he is under 16 years of age or is a woman or a sick or infirm person.

8. In this case petitioner accused woman is certified by Medical Officer, Central Jail, Srinagar, where she is currently held as under trial, to suffer from major depressions/disorder which needs prolonged treatment and she has to be on antipsychotic life long treatment. The latest certificate is of 25-5-2004.

9. Mr. T. Khawja, GA, is not contesting this aspect of the case and refrains from joining issues as to correctness of the contents of the above medical report.

10. Declining of bail to this accused by the trial Court is on prime consideration that the accused/applicant is involved in commission of a serious crime of murder of another woman. The status of above ailment of applicant/accused, to the ailment with identical fact situation and equalance of circumstances of the other two accused admitted to bail, is not also discounted for in the order. The learned Counsel also submits that the evidence led in this case so far is exculpatory rather than inculpatory so far as applicant-accused is concerned and in any case reasonable grounds for believing her to be guilty are absent. This statement of the

counsel cannot be verified as neither the trial Court record is before this Court nor Mr. Khawja is in a position either to confirm or refute this statement of the counsel.

11. In the above over all view of the matter, the accused lady is admitted to bail in the sum of Rs. 15000/-, with two sureties and personal recognizance bond in the like amount to the satisfaction of the District and Sessions Judge, Baramulla on condition that the accused shall refrain from threatening, intimidating, bringing on undue influence, coercing or otherwise dissuading any witness who is likely to appear against accused during the life time of the case. Besides subject to orders of trial Court, the accused shall appear before the trial Court on each and every hearing during the course of the trial and shall not leave the limits of jurisdiction of that Court without permission of the trial Court.

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