

Mani Kumar Subba Vs. the State of Assam.

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Court : Guwahati

Decided On : Oct-07-2010

Judge : Mr Justice P. K. Musahary, J.

Appeal No. : CASE NO Bail Appln. 4412 of 2010

Appellant : Mani Kumar SubbA.

Respondent : The State of Assam.

Advocate for Def. : A M Bora, Adv.

Advocate for Pet/Ap. : B C Das; P Upadhyay; T Bora; D Sarmah, Adv.

Judgement :

1. Heard Mr. B. C. Das, learned senior counsel, assisted by Mr. P. Upadhyay, learned counsel. , appearing on behalf of accused petitioner. Also heard Mr. K. Munir, learned Addl. P. P. , appearing on behalf of respondent State of Assam and Mr. A. M. Borah, learned counsel, appearing on behalf of informant victim woman.
2. Apprehending arrest in connection with Chandmari P. S. Case No. 253/2010 registered under Section 376 I. P. C. based on a written FIR dated 13. 07. 2010 lodged by one Smti. Shikha Sharma, the present accused petitioner has moved this bail application under Section 438 of the Code of Criminal Procedure, 1973, for releasing him on pre-arrest bail.

3. This is the second bail application filed by the present accused petitioner Sri Mani Kumar Subba on what is called fresh grounds after the first bail application was rejected by this court vide order dated 28. 07. 2010 in B. A. No. 3265/2010 in connection with the aforesaid police case.

4. In the aforesaid FIR, it has been alleged that the accused petitioner, above named, forcefully committed rape on the informant victim woman on 13. 07. 2010 at about 9 o'clock when she visited his house on his call over phone to discuss about some domestic matter. The informant victim woman made statements before the Investigating Officer under Section 161 of the Code of Criminal Procedure, 1973, and also on oath, before the learned SDJM(S)-II, Kamrup, under Section 164 of the Code of Criminal Procedure, 1973, on 14. 07. 2010, in that regard. The said informant victim woman was medically examined by the Doctor and her under garments were also sent for FSL examination. On perusal of medical report and the connected CD, this court rejected the first bail application, as stated above.

5. In the instant bail application, as of new grounds , it is stated by the accused petitioner that a TV News Channel namely News Live carried out a sting operation through one Sri Haren Sarma, on 07. 09. 2010, at a restaurant at Bhangagarh, Guwahati, preceded by a telephonic conversation between them. The said conversation was telecast by the aforesaid News Channel on 09. 09. 2010 at 7 P. M. under the caption Sting Operation. In the said sting operation, the informant victim woman during her conversation, admitted acceptance of Rs. 50,000/- as advance money, from one Member of Parliament(M. P.) and two Members of Legislative Assembly (MLA), for lodging the rape case and she also disclosed that they promised to pay further amount of Rs. 6 Crores for publicity against the accused petitioner. The husband of the informant victim woman was also present at the time of the said sting operation. The informant victim woman allegedly stated before Haren Sarma that she would withdraw the rape case if accused petitioner Sri Mani Kumar Subba pays her Rs. 3 Crores otherwise she would continue with the said rape case and would do whatsoever is directed by those persons who had already paid her advance money. The informant victim woman gave her various Bank Accounts to Sri Haren Sarma to deposit the money in her

Bank Accounts. After recording the conversation in the mobile phone and in video camera, a CD was prepared and the same was handed over to Chandmari Police Station on 08. 09. 2010 along with formal application for doing the needful. On the basis of the aforesaid development, the Personal Assistant(in short 'PA') to accused Mani Kumar Subba, filed a written FIR on 11. 09 . 2010 against the informant victim woman and her husband and the same was registered as Chandmari P. S. Case No. 354/2010 under Sections 120B/384/211/511 of I. P. C . (Annexure 3 to the bail application).

6. A written counter FIR was also lodged by the informant victim woman on 10. 09. 2010 against Sri Haren Sarma, which has been registered as Dispur P. S. Case No. 1174/2010 under Sections 120B/ 341/354/ 506/294/34 of IPC . In the said FIR, the informant victim woman, amongst others, stated that she met Sri Haren Sarma at Big Bazar and he made her talk to accused Sri Mani Kumar Subba on his mobile phone. According to the informant victim woman , accused Mani Kumar Subba wept while talking to her over the mobile phone and he asked her to accept an amount of Rs. 1 Crore from him and withdraw the case alleging commission of rape against him but she demanded Rs. 3 Crores through Sri Haren Sarma. The informant victim woman was told by Sri Haren Sarma that accused Sri Mani Kumar Subba would come by Helicopter and make the payment himself and then, she agreed to give her Bank Account Nos . to accused Sri Mani Kumar Subba. Accordingly, she agreed to accept the amount of Rs. 3 Crores because if the same is deposited in her Bank Accounts, accused Mani Kumar Subba could be easily traced out. In the said FIR, it is also stated that Sri Haren Sarma recorded the whole proceeding by a secret camera which was beyond her knowledge and imagination. The informant victim woman admitted that she carried a spy camera but since she did not know how to operate it, she could not record anything . The informant victim woman further stated in her FIR that Sri Haren Sarma is a simple man and as such, she did not want to implicate him in this case. She further stated that she only wanted to trap accused Sri Mani Kumar Subba but she was surprised to know that Sri Haren Sarma had actually carried out a sting operation against her secretly in collusion with accused Sri Mani Kumar Subba. A copy of this FIR has been appended as Annexure-1 to Criminal Misc. Case No. 585/2010 which was filed by the informant objecting the present bail petition.

7. In the meantime, the informant victim woman and her husband filed a bail application, before this court, praying for grant of pre-arrest bail in connection with Chandmari P. S. Case No. 354/2010 under Sections 120B/384/211/511 of I. P. C. dated 11. 09. 2010 which was registered on the basis of a written FIR filed by one Sri Tulsi Prasad Sarma, P. A. to accused Sri Mani Kumar Subba. The said bail application has been registered as B. A. No. 4561/2010 which was also listed in the Daily Cause List dated 05. 10. 2010 at Serial No. 78.

8. The other new ground according to accused petitioner Sri Mani Kumar Subba is that he showed the medical report on genital examination of the informant victim woman to Dr. P. C. Sarma, D. F. M. , M. D. , LL. B. , former Professor and Head of Forensic Medicine Department, GMCH, who examined the same and opined that there was no sign of sexual intercourse on the person of informant Smti. Shikha Sharma.

9. At this stage, I do not like to make any observation or comment on the aforesaid new grounds but I would like to refer to certain averments made by the accused petitioner in the instant bail application. The accused petitioner Sri Mani Kumar Subba notably stated that he is a heart patient and had undergone Open Heart By Pass Surgery and since then, he has not been keeping good health. On the other hand, the informant victim woman is a lady of stronger physique with tall features in comparison to accused petitioner's weak physique and frail features. According to her statement, she was smartly clad in modern sleek pant and coloured top at the time when she visited the house of accused petitioner and was allegedly forcibly ravished by him. Equally smartly attired in 'churidar', she presented herself before the Chandmari Police Station with the same piece of Bra and Panty put on at the time of ravishment, lodged a written FIR and got the said Bra and Panty seized by the police.

10. It may be noticed that the sleek pant and coloured top were not produced by her before the police for examination if they were found torn due to alleged use of force by accused Sri Mani Kumar Subba in committing rape on her.

11. On perusal of CD, it is found that the I. O. has already recorded the statements of all the persons who were present in the residence of present accused petitioner

at the time of alleged occurrence. The statement of accused Sri Mani Kumar Subba was also recorded on 21. 07. 2010. The medical report in connection with the victim woman has been obtained by police and a copy of the same is available in the CD. Both the victim woman and her husband were examined on three occasions. The CDs on sting operation prepared by Sri Haren Sarma are in the custody of police. It appears that the I. O. has made considerable progress in investigation of the matter and he is in a position either to submit the charge-sheet or return the case in F. R. on the basis of evidence on record in accordance with law.

12. The medical report contains opinion of the Doctor who examined the victim woman, which are, as under:

1. Her age is above 25(twenty five) years. However for exact age estimation radiological examination is essential.

2. Evidence of recent sexual intercourse not detected on her.

3. Evidence of injury not detected on her person.

13. The above are the opinion of the concerned Doctor. The court is not required to examine nor is it competent to examine as to the correctness of the said opinion but it is enough for the court to take a prima-facie view that the victim woman was not raped. It can be testified/proved only by examining and cross-examining the Doctor concerned who examined the victim woman at the time of trial. This court can, however, dispose of the instant bail application on consideration of the said medical report.

14. As per the result of the laboratory evidence, as mentioned in the medical report, no spermatozoa and gonouiceis was found in glass slide smear. In the genital examination, it is stated in the report that vagina was found roomy rugosity decreased. This court is also not to examine and make any comment like an expert person/authority and the same should be left for proof at the time of trial. The court is not required to sit and consider like an expert body to critically analyze the medical report in question at this stage for granting or refusing the bail. The court

while granting anticipatory bail to an accused is to consider certain factors like - (i) nature of gravity or seriousness of accusation, (ii) antecedents of the applicant, (iii) likely object of accusation to humiliate or malign the reputation of the applicant by having him arrested, and (iv) chance of fleeing from justice. I may refer to State of Maharashtra -vs- Mohd. Sajid Husain Mohd. S. Husain & Ors. , reported in (2008) 1 SCC 213. That was a case where a minor girl was driven to flesh trade by the accused, police officers , politicians and businessmen and compared to the said case, the gravity and seriousness of accusation of committing rape of a lady of 25 years of age, can be considered as less serious offence than the ones mentioned in the said case. There is no doubt that the accused petitioner returned as a Member of Parliament (MP) at least for two terms and is a member of Indian National Congress Party ('INC' in short). In the instant case, since accused Sri Mani Kumar Subba is having his permanent residence at Guwahati, Assam, as such, it cannot be said that he would flee from justice or jump the bail. What is more evident from the CD is that the informant herself is also an active member of the INC party and she was allegedly set-up by an M. P. and two MLAs of the same party to avenge their political rivalry/grudge. The object of accusation against the accused petitioner is not unlikely to humiliate or malign his reputation by having him arrested by the police.

15. Taking into consideration all these aspects, I am of the considered view that accused Sri Mani Kumar Subba is entitled to enjoy the privilege of anticipatory bail. But the question is whether a blanket order of anticipatory bail could be granted to him. Law is already settled in this regard. In Salauddin Abdulsamad Shaikh -vs- State of Maharashtra, reported in (1996) 1 SCC 667, it is held that 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. The same law has been affirmed in Sunita Devi -vs- State of Bihar & Anr. , reported in (2005) 1 SCC 608.

16. In view of the foregoing discussion based on the rulings of the Apex Court in the aforesaid cases, I direct that accused Sri Mani Kumar Subba, in the event of

his arrest in connection with Chandmari P. S. Case No. 253/2010 under Section 376 I. P. C. , shall be enlarged on bail for a limited period of 3(three) months from today on his execution of a bail bond of Rs. 30,000/- with 2(two) local sureties of the like amount to the satisfaction of investigating authority on condition that he shall appear-in-person before the I. O. concerned within a period of 7(seven) days from today in connection with the above mentioned case and as & when required and he shall also comply with other conditions as laid down in Section 438(2) of the Code of Criminal Procedure, 1973 . After expiry of stipulated 3(three) months period from today, the accused petitioner may approach the learned trial court concerned for grant of regular bail, if so advised.

17. With the above directions, this bail application stands disposed of.

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