

Sunil Kumar Sharma Vs. State

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Court : Delhi

Decided On : Feb-11-2011

Judge : Hima Kohli, J.

Acts : Code of Criminal Procedure (CrPC) (Cr.P.C) - Section 439; Indian Penal Code (IPC) - Sections 302, 394

Appeal No. : BAIL APPLN. 1200/2010

Appellant : Sunil Kumar Sharma

Respondent : State

Advocate for Def. : Mr. M.N. Dudeja, Adv.

Advocate for Pet/Ap. : Mr. Gyan Prakash; Ms. Neeraj Pal, Adv.

Judgement :

1. Whether Reporters of Local papers may No be allowed to see the Judgment?
2. To be referred to the Reporter or not? No
3. Whether the judgment should be No reported in the Digest?

1. The present petition is filed by the petitioner under Section 439 of the Cr.PC praying inter alia for grant of bail in FIR No.58/2009 lodged under Sections 302/394 IPC, registered with Police Station: Connaught Place, New Delhi.

2. Notice was issued on the present petition on 13.07.2010, when, in view of the submission made by the counsel for the petitioner that the medical condition of the petitioner ought to be ascertained, learned APP for the State was directed to file a Status Report, as to the mental condition of the petitioner, which was required to be submitted by IHBAS, Shahdara. On 18.08.2010, the nominal roll of the petitioner was forwarded and on the said date, counsel for the petitioner stated that the petitioner had been admitted in IHBAS, Shahdara on 04.08.2010. As a result, the Medical Superintendent, IHBAS, Shahdara was directed to submit a report as to the mental status of the petitioner and the matter was directed to be listed on 21.10.2010. On 17.01.2011, notice was taken of the report dated 16.08.2010 submitted by the Senior Medical Officer, Central Jail No.4, Tihar, New Delhi but as the report from IHBAS was still not on record, the matter was adjourned.

3. Today, counsel for the petitioner draws the attention of this Court to the report of the Medical Board constituted by IHBAS, Shahdara in respect of the petitioner. As per the report of the Medical Board, there is no evidence of psychiatric illness or mental subnormality in the petitioner. Pertinently, one of the grounds taken for grant of bail is the medical condition of the petitioner, which is now no longer available to him, in view of the opinion submitted by the Medical Board.

4. At this stage, counsel for the petitioner states that even on merits, the petitioner is entitled to grant of bail as even though the FIR was initially registered against him under Sections 302/394 IPC, recently, vide order dated 10.11.2010, the learned Sessions Judge held that there was no evidence on record to attract the provisions of Section 394 IPC and thus, no charge could be framed against the petitioner under the said provision. As a result, the petitioner was discharged under Section 394 IPC. However, charges were framed against him under Section 302 IPC. Counsel for the petitioner submits that the petitioner was a dish washer in a restaurant situated at Connaught Place, where the crime took place and that he belongs to a middle class educated family and has been unnecessarily implicated in the present case. He is, therefore, entitled to grant of bail.

5. As per the status report filed by the learned APP, the incident in question occurred on 14.02.2009 at about 1:15/1:30 AM. The aforesaid date being Valentine Day, there was huge rush at the restaurant till 12:30 AM. After entry of guests was closed, the cashier is stated to have counted the cash and the same was found to be about `2.20 lacs, which was a huge amount. The aforesaid information was conveyed to the owner of the restaurant in the presence of the petitioner and two others. After the employees, including the petitioner, left the restaurant, the deceased, Rajesh Thakur, who was posted as security guard at the restaurant, checked the cash counter. The petitioner accompanied his colleagues outside the restaurant, but it is submitted that in the course of investigation, it was learnt from the Pan vendor, sitting opposite Competent House, middle Circle, Connaught Place, from where the staff of Host Restaurant used to enter/exit, that on that very night, the petitioner came to his shop, made some purchases and then went towards the restaurant from the back side.

6. It is stated by the learned APP that it is a case where circumstantial evidence exists, which reveals that the petitioner was aware of the fact that there was a large amount of cash lying at the restaurant and that there was only one security guard to guard the restaurant on that date. He was also the last seen person entering the restaurant from the back side. It is further stated that on the basis of the disclosure statement made by the petitioner, the police team went to Deen Dayal Upadhyaye Marg under Ranjeet Singh Flyover, from where they recovered one black polythene bag, which was found to contain one blood stained Angocha of white and red colour, one torn sheet of the Hindustan Times newspaper, which was blood stained, an iron Moosali and two broken pieces of old wooden wickets, which were blood stained. It is further stated by the learned APP that the petitioner had absconded and had not joined the investigation, till he was accosted on 16.04.2009 at the Bus Stop, Tilak Marg with his brother and was subsequently arrested. On enquiry, learned APP further informs the Court that after framing of charges, the matter is now listed on 24.02.2011 for recording the evidence of the prosecution and it is apprehended that in case the petitioner is granted bail at this stage, he may influence the material witnesses.

7. Having regard to the gravity of the facts and circumstances of the present case as noted above and in view of the fact that none of the public witnesses have been examined till now, at this stage, this Court is not inclined to entertain the present petition. The same is, therefore, dismissed.

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