

Gayatri Devi Vs. State and ors

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Court : Delhi

Decided On : Sep-22-2011

Judge : Suresh Kait, J.

Acts : Indian Penal Code (IPC) - Sections 498A, 304B; Code of Criminal Procedure (CrPC) - Sections 439, 161

Appeal No. : Cri.M.C.No.1719/2011

Appellant : Gayatri Devi

Respondent : State and ors

Advocate for Def. : Ms.Rajdipa Behura And Ors.

Advocate for Pet/Ap. : Mr. Mohit Mathur; Mr.Shishir Mathur, Adv.

Judgement :

1. Vide the present petition, the petitioner has assailed the order dated 21.04.2011 passed by learned Additional Sessions Judge, whereby the respondent No.2/accused has been admitted on bail.
2. Before advertng to the petition, let briefly recapitulate the facts.
3. A case under Section 498A/304B Indian Penal Code was registered against respondent No.2 and his relatives vide FIR No.324/2009 dated 31.12.2009 at police station Janakpuri, New Delhi.

4. Initially, respondent No.2 moved an anticipatory bail application before the Sessions Court which was rejected vide order dated 20.01.2010.
5. Being aggrieved, he approached this Court and vide order dated 10.03.2010, the petition of respondent No.2 was rejected.
6. Thereafter, respondent No.2 moved Special Leave Petition before the Supreme Court and vide order dated 05.04.2010, respondent No.2 was granted interim relief.
7. Vide order dated 07.01.2011, during the pendency of the said SLP of respondent No.2, Hon'ble Supreme Court wanted to see the FSL report, but the same was not available on the record.

However, during the pendency of the SLP the investigating agency filed the charge-sheet in the present case on 13.01.2011. Further, on 28.01.2011, investigating agency filed the supplementary charge-sheet.
8. After perusing the FSL report; vide order dated 11.02.2011, the Apex Court dismissed the SLP. After which, respondent No.2 surrendered before the Court and moved a bail application under Section 439 Code of Criminal Procedure, same was dismissed by the learned Additional Sessions Judge vide order dated 07.03.2011.
9. After committal of the case, the investigating officer Inspector Prabhu Dayal, visited the house of the petitioner and investigated the incident of threat given by Surat Singh s/o Sugad Ram, brother of the accused/respondent No.2 to the son of the petitioner against which, the complaint was lodged on 09.01.2010 by the son of the petitioner.
10. Respondent No.2 moved another bail application before the learned Trial Court. After hearing both the parties, learned Additional Sessions Judge had dismissed the same vide order dated 07.03.2011.
11. The main pleas raised by learned counsel for petitioner is that same learned Additional Sessions Judge rejected the bail application under Section 439 Code of

Criminal Procedure of the respondent No.2 vide its order dated 07.03.2011, whereas, by the impugned order dated 21.04.2011, respondent No.2 was admitted to bail.

12. In the order dated 07.03.2011, learned Additional Sessions Judge while dismissing the first bail application had observed as under:-

"Admittedly, deceased Meenu had died within eight months of her marriage with the Applicant. As discussed above, there is sufficient allegation of cruelty and using abusive language by the Applicant to the deceased and also physical beatings and torture by the accused/Applicant to the deceased as result, she has committed suicide. There is no doubt that the allegation against the accused/Applicant are serious and the gravity of the offence is not in dispute. The material as discussed above shows that the accused/Applicant has allegedly extended threats to the brother of the deceased after his wife committed suicide and had died in unnatural circumstances due to the alleged mental and physical torture committed by the accused /Applicant. In these facts and circumstances, I am of the opinion that in case the accused/Applicant is released on bail, there is every likelihood that he may tamper with the prosecution evidence and may hamper the fair trial in this case. Therefore, seeing the gravity of the offence and in totality of the facts and circumstances of the case, I do not find any ground for granting bail to the accused/Applicant. The application is accordingly, dismissed. Copy of this order be sent along with the Trial Court record. Accused/Applicant be produced before Ld.ACMM (West) on 08.03.2011 at 10.00am. Copy of the order be given dasti."

13. Thereafter, learned Additional Sessions Judge granted bail to respondent No.2 after spending 45 days in jail on the second bail application moved by respondent No.2, has observed as follows:-

"On 31.03.2011 2nd bail application was moved by the accused seeking bail on the ground that there are new ground for consideration by this Court for granting bail because there is no apprehension of threat to the witness at all. It is further argued that deceased committed suicide because of depression and not because of any alleged harassment and torture by the accused persons; the arrest of the

accused was stayed by the Hon'ble Apex Court and during investigation he has not misused the same in any manner and has regularly joined the investigation till the filing of the charge-sheet; he would not threat the witnesses in any manner during trial and he being government employee posted as Section Officer in Ramjas College, University of Delhi is having no chance of absconding or fleeing from justice and as such in the given facts and circumstances he prayed for grant of regular bail."

14. It has also been recorded by learned Additional Sessions Judge that Investigating Officer of the case Inspector Prabhu Dayal of police station Janakpuri, New Delhi has filed reply giving details of allegations as mentioned in the charge-sheet. In the last para he had stated that on 19.01.2010, a PCR call regarding a threat was received at police station vide DD No.18A and said DD was marked to HC Khazan Singh, who conducted the inquiry and had filed the said DD as untraced by recording DD No.51B dated 09.01.2010. It is further recorded that the brother of the deceased had also made a written complaint on 09.01.2010 to the SHO, Janakpuri, New Delhi, wherein, he had been allegedly threatened by Surat Singh brother of respondent No.2 either to withdraw the criminal case instituted against his brother and mother otherwise his family will be ruined.

15. The Trial Court has also recorded that Shri Vivek Kumar, brother of deceased who is practicing advocate assisted Ld Addl. PP for the State.

16. After hearing both the parties, it is observed by learned Additional Sessions Judge, that in the order dated 07.03.2011 there was an inadvertent observation by this court wherein it is stated that contents of the alleged suicide note dated 28.06.2009 had been verified and confirmed by the FSL report. On perusal of the FSL report dated 09.11.2010, it revealed that the handwriting Q1 to Q5 which is in Hindi & contents of the alleged suicide note could not be tallied with A1 & A2 admitted handwriting of the deceased collected during investigation by the IO.

17. Learned Additional Sessions Judge has also recorded submission of learned counsel for accused that on that day despite conclusion of the investigation, there was no admissible evidence in the form of a suicide note against respondent No.2 and because of the verification of the signature, and of alleged questioned writing

in Q1 to Q5 could not be attributed to be the handwriting of the deceased.

18. Learned Additional Sessions Judge has also recorded that respondent No.2/accused had been joining the investigations till the filing of the charge-sheet and witness Shri Vivek Kumar and other family members have been examined and their supplementary statements were recorded during the investigation and they have not alleged anything about the threats as allegedly stated in the complaint dated 09.01.2010.

19. It is also recorded by learned Additional Sessions Judge that statement of Shri Vivek Kumar on 26.04.2010 had revealed nothing about the threat.

20. Regarding the contents of the FSL report and non- verification of the contents of the alleged suicide note, learned APP had submitted that the brother of the deceased Shri Vivek Kumar had stated that there were sufficient hand writing of the deceased in Hindi, but the police had never asked them to supply the same. In case police wanted the handwriting of the deceased in Hindi, that could be given for investigation and comparison of the contents of the suicide note, allegedly written in Hindi and signed in English by the deceased.

21. Admittedly, the suicide note left by the deceased is in Hindi, whereas, the signature thereon of the deceased are in English.

22. Learned Additional Sessions Judge on the basis of the above discussion, had reached the conclusion that respondent No.2/accused stated to be a government employee working as Section Officer in Ramjas College, Delhi University. His mother Smt.Maya Devi, co-accused had already been admitted on bail. At the time of death, deceased was living with her parents since 28.11.2009 i.e. about a month before the death.

23. Learned counsel for the petitioner has drawn the attention of this Court to the suicide note, which is in Hindi, however, the signature and few words in between are written in English. He further submitted that the Trial Court has gone wrong on the version that there is no report of the FSL on the suicide note, which was in Hindi, therefore, learned Additional Sessions Judge has formed his opinion on a

wrong premise.

24. Further submits that there was no change of circumstances in the present case and same learned Additional Sessions Judge dismissed the bail application of the respondent No.2 before sending him to jail.

25. Learned counsel for the petitioner has relied upon the decision Kalyan Chandra Sarkar Vs. Rajesh Ranjan @ Pappu Yadav & Ors 2004 SCC (Cri) 1977 wherein it held as under:-

"Before concluding, we must note though an accused has a right to make successive applications for grant of bail the court entertaining such subsequent bail applications has a duty to consider the reasons and grounds on which the earlier bail applications were rejected. In such cases, the court also has a duty to record what are the fresh grounds which persuade it to take a view different from the one taken in the earlier applications. In the impugned order we do not see any such fresh ground recorded by the High Court while granting bail. It also failed to take into consideration that at least on four occasions order refusing bail has been affirmed by this Court and subsequently when the High Court did grant bail, this Court by its order dated 26th July, 2000 cancelled the said bail by a reasoned order. From the impugned order, we do not notice any indication of the fact that the High Court took note of the grounds which persuaded this Court to cancel the bail. Such approach of the High Court, in our opinion, is violative of the principle of binding nature of judgments of superior court rendered in a lis between the same parties, and in effect tends to ignore and thereby render ineffective the principles enunciated therein which have a binding character."

26. Additionally relied upon Prakash Kadam Vs. Ramprasad Vishwanath Gupta: (2011) 6 SCC 189 wherein it has been observed as under:-

"16. The Sessions Court granted bail to the appellants but that has been cancelled by the High Court by the impugned judgment.

17. xxx xxx xxx

18. In considering whether to cancel the bail the court has also to consider the gravity and nature of the offence, prima facie case against the accused, the position and standing of the accused, etc. If there are very serious allegations against the accused his bail may be cancelled even if he has not misused the bail granted to him. Moreover, the above principle applies when the same court which granted bail is approached for cancelling the bail. It will not apply when the order granted bail is appealed against before an appellant/ Revisional Court.

19. In our opinion, there is no absolute rule that once bail is granted to the accused then it can only be cancelled if there is likelihood of misuse of the bail. The factor, though no doubt important, is not the only factor. There are several other factors also which may be seen while deciding to cancel the bail."

27. Learned counsel for respondent No.2 has argued that since 28.11.2009, deceased was with her parents because on 01.12.2009, there was the marriage ceremony of the brother of deceased. Admittedly, respondent No.2 attended the ring ceremony on 30.11.2009. Somehow, due to some altercation which took place with the brother of the deceased; he did not attend the marriage on 01.12.2009.

28. Learned counsel for respondent No.2 has drawn attention of this Court to DD No.17A dated 13.09.2009, wherein, no allegations of demand of dowry have been recorded. He has further referred the statement of SI D. K. Singh recorded under Section 161 Code of Criminal Procedure, wherein, there are no allegations of demand of dowry.

29. Learned counsel for respondent No.2 has relied upon Bhagirathsingh v. State of Gujarat (1984) 1 SCC 284 wherein it has held as under:-

"In our opinion, the learned Judge appears to have misdirected himself while examining the question of directing cancellation of bail by interfering with a discretionary order made by the learned Sessions Judge. One could have appreciated the anxiety of the learned Judge of the High Court that in the circumstances found by him that the victim attacked was a social and political worker and therefore the accused should not be, granted bail but we fail to

appreciate how that circumstance should be considered so overriding as to permit interference with a discretionary order of the learned Sessions Judge granting bail. The High Court completely overlooked the fact that it was not for it to decide whether the bail should be granted but the application before it was for cancellation of the bail. Very cogent and overwhelming circumstances all necessary for an order seeking cancellation of the bail. And the trend today is towards granting bail because it is now well-settled by a catena of decisions of this Court that the power to grant bail is not to be exercised as if the punishment before trial is being imposed. The only material considerations in such a situation are whether the accused would be readily available for his trial and whether he is likely to abuse the discretion granted in his favour by tampering with evidence. The order made by the High Court is conspicuous by its silence on these two relevant considerations. It is for these reasons that we consider in the interest of justice a compelling necessity to interfere with the order made by the High Court."

30. Further relied upon *Dolat Ram & Ors v. State of Haryana*:(1995) 1 SCC 349 wherein it has been observed as under:-

"Rejection of bail in a non-bailable case at the initial stage and the cancellation of bail so granted, have to be considered and delay with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted. Generally speaking the grounds of cancellation of bail, broadly (illustrative and not exhaustive) are: interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. The satisfaction of the Court, on the basis of material placed on the record of the possibility of the accused absconding is yet another reason justifying the cancellation of bail. However, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial. These principles, it appears, were lost sight of by the High Court when it decided to cancel the bail, already granted. The High Court it appears to us overlooked the distinction of the factors relevant for rejecting bail in a non-bailable case in the first

instance and the cancellation of bail already granted".

31. Additionally relied upon Samarendra Nath Bhattacharjee v. State of West Bengal & Another: (2004) 11 SCC 165 wherein it has been observed that:-

"11.Having heard the learned counsel and having perused the records of the we notice that the trial court after looking into the case diary and other material produced before it and also noticing the fact that investigating agency had only sought judicial remand, and the argument of the possibility of accused tampering with the evidence still taking into consideration the age and ailments of the accused appellant granted bail on stringent condition.

12. Per contra, the High Court, in our opinion, has approached the case as if it is an appeal against the conviction by giving findings on factual issues which are yet to be decided which, in our opinion, is too premature and is likely to prejudice the trial. For example, this is what the High Court had to observe at one part of its judgment that:

"She was battered, abused; above all, she was wronged in her castle with which she had unknowingly built with quick sand and ultimately, happiness which she so passionately sought for turned down to be a teasing mirage for her."

13. This finding, in our opinion, could be construed as a finding accepting the allegation of the complainant which might prejudice the case of the defence, at any rate these findings are unnecessary while considering a petition for cancellation of bail. That apart since the only ground on which the cancellation could have been ordered being the ground of intimidation which, in our opinion, is not satisfactorily proved, the High Court erred in cancelling the bail granted to the appellant."

32. Indisputably, relief in the second bail application had been granted to the respondent No.2 after he has spent 45 days in custody. Earlier, the order dated 07.03.2011 was passed on the premise that FSL report has confirmed the handwriting of the deceased wherein direct allegations of physical cruelty and mental cruelty are alleged on respondent No.2.

33. Vide the impugned order, learned Trial Court has granted bail on the ground that FSL report dated 09.11.2010; the handwriting Q1 to Q5 which is in Hindi and the contents of the alleged suicide note could not be tallied with A1 and A2. The observation in the FSL report that writing Q1 to Q5 could not be attributed to be handwriting of the deceased.

34. Giving any opinion on the facts of the case at this stage would prejudice the trial as the matter is still in its infancy. However, it is well settled that once bail is granted the same should not be cancelled in a mechanical manner, without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial, to allow the accused, to retain his freedom by enjoying the concession of bail during trial.

35. In my opinion, at the time of deciding the second bail application, the changed circumstances before the learned Trial Court was that, respondent No.2 remained in jail for 45 days.

36. Further, there is no apprehension of absconding by respondent No.2/accused, as he is employed as Section Officer in Ramjas College, University of Delhi. The suicide note was in Hindi; whereas the opinion of the handwriting expert is only given in regard to the signatures, which are in English. The co-accused has already been granted bail. It is noted that respondent No.2 had fully co-operated in the investigation, with the investigating agency during the interim relief granted to him.

37. For the reasons stated above I am of the considered view that no ground to interfere with the impugned order passed by learned Trial Court is made out. The said order is a well reasoned order and I concur with the same.

38. Hence, Criminal M.C.No.1719/201 is dismissed.

39. No costs.

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