

Jagir Singh Vs. Jagjit Singh and anr

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Court : Jammu and Kashmir

Decided On : May-15-2012

Judge : Hon'ble Mr. Justice Muzaffar Hussain Attar

Appellant : Jagir Singh

Respondent : Jagjit Singh and anr

Judgement :

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU. 561_A No. 253 OF 2011. Jagir Singh Petitioners Jagjit Singh and anr Respondent !Mr. Sunil Sethi, Sr. Adv. With Ms. Veenu Gupta, Adv ^Mr. K.S. Chib, Adv. for R-1 Ms. Z.S. Watali, Dy.AG for R-2 Honble Mr. Justice Muzaffar Hussain Attar, Judge. Date:

15. 05.2012 :

: This petition is filed seeking setting aside of the order dated 8th July, 2011, passed by the learned Municipal Magistrate, Jammu as also the order dated 26th September, 2011, passed by the learned Sessions Judge, Jammu. One Bimla Kour was married to Jagjit Singh accused in the year 1995 and she gave birth to two sons. In the year 2011, the sons were at the age of 13 and 15 respectively. An FIR bearing registration No.74/11, under Sections 306/498-A RPC was lodged with Police Station, Gangyal on the allegation that because of the continuous torture and ill treatment meted out to the Bimla Kour by her husband, she committed suicide by taking some poisonous substance. After the arrest of the

accused, application for grant of bail was filed on his behalf, which application was allowed by the learned Municipal Magistrate, Jammu, vide order dated 8th July, 2011, and the accused was enlarged on bail subject to furnishing of surety bond and personal bond to the tune of Rs.20,000/- each. The bail order was hedged with the conditions that the accused shall participate in the investigation and appear before the Investigating Officer as and when required. It was also provided that he shall not tamper with prosecution evidence in any manner. The petitioner filed revision petition before the Court of learned Sessions Judge, Jammu, who vide its order dated 26th September, 2011, dismissed the same. Mr. Sunil Sethi, learned Senior Advocate, submitted that on the allegations leveled in the FIR as also in the evidence which has come on record during the investigation of the case, it is a case of murder and not of suicide. Learned counsel in this behalf referred to the statement of one Lakhwinder Singh son of the deceased and accused, recorded under Section 164-A Cr.PC. Learned counsel also submitted that the learned Magistrate has granted the bail without taking into consideration the principles on which the discretion was to be exercised by him. Learned counsel further submitted that only on the ground that the accused was remanded to the judicial custody, the learned Magistrate granted bail to him. Learned counsel submitted that in law, this rule would not be a ground to allow the application of the accused. The allegations leveled in the FIR and in the statement of the minor son, are definitely serious in nature. The allegation that Bimla Kour committed suicide because of the ill treatment meted out to by the accused, is serious in nature. The allegations show that a person has lost her life, which is precious. It was submitted at bar that the report under Section 173-A Cr.PC has been filed against the accused in the Court of competent jurisdiction. Grant or refusal of bail is in the discretion of the Court of competent jurisdiction. While considering the case for grant of bail or its refusal, the learned Magistrate has to advert his attention to the nature of the offence, the evidence collected in support of the case and has to prima facie enter into satisfaction, in the event, bail is to be granted, as to whether the accused will cooperate with the investigating agency or will slip the law and justice. Nothing is brought on record to suggest that the accused, who was granted bail has misused or abused this concession granted to him by the Court. Even Ms. Z.S. Watali, learned Deputy Advocate General had nothing to say

against the conduct of the accused. In a case where the learned Magistrate deems it proper to give concession of bail then while exercising the discretion, he has to prima facie satisfy himself that after granting bail, the accused will not tamper with the prosecution evidence and will not in any manner whatsoever impede the course of justice. After registration of the case and till the final conclusions are drawn by the trial Court, the accused is presumed to be innocent. It is only when the guilt is proved against him beyond all shadow of doubt, he is convicted of the offences with which he is charged. The power to grant bail has to be considered in the backdrop of the constitutional guarantee contained in Article 21 of the Constitution of India, which guarantees right to liberty of an individual. The learned Magistrate has to ensure that accused remains available during trial before the court. The purpose can be accomplished by remanding the accused to the judicial custody or by giving him into the custody of sureties. The learned Magistrate in the impugned order though has referred to the principles on which bail can be granted or refused but has not recorded appropriate satisfaction about same in the order. However, the Court is not interfering in the bail order at this time, inasmuch as, nothing is brought on record that the accused has made any effort to abuse the concession of bail granted to him. The report under Section 173-A Cr PC has also been filed against the accused before the Court of competent jurisdiction. This petition, for this reason, would not survive and is, accordingly, dismissed. The dismissal of this petition, however, may not prevent the aggrieved person to file application seeking cancellation of bail before the learned Trial Court, in case, it is found that the accused, in any manner, whatsoever has abused the concession of bail granted to him. (MUZAFFAR HUSSAIN ATTAR) Judge Jammu 15.05.2012
Varun Bedi

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