
(1981) 03 RAJ CK 0020
In the Rajasthan High Court

Abdul Majid

APPELLANT

Vs

The State of Rajasthan

RESPONDENT

Date of Decision : 27-03-1981

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 438

Citation : (1981) CriLJ 1316 : (1981) RLW 138

Hon'ble Judges : G.M. Lodha, J

Bench : Single Bench

Judgement

G.M. Lodha, J.—Bail without jail" in a rape case is an extraordinary situation, but the case is also unusual and the allegations puzzling.

2. Abdul Majid has filed this application for bail u/s 438, Cr. P. ,C. The victim of the alleged offence is Mst. Munni Bai wife of Sheikh Jawan kfiied about 40 years. In an extremely belated First Information Report, story of the prosecution is that while Munni Bai was going to the field for giving the food to her husband, accused intervened near Nala with a gun and physically caught hold of her and took her to the Nala and forcibly committed rape on her. Munni Bai tried to push back the accused but could not succeed. Two brothers of thP .husband of Munni Bai suddenly appeared there at the time the accused was on the verge of running and saw him running from the scene of occurrence. Even then, it is alleged that Munni Bai went all alone with the food to the field of her husband.

3. learned Counsel for the accused has submitted that a false case has been lodged on account of some money dealings. It was pointed out that the medical evidence fail"s to support the prosecution casa There is not even a scratch br "anty iniury of that nature on the person bf Mst. Munni Bai even though, it is alleged that she tried to push back the accused and was thrown in a Nala. It was also argued that the story that two to others of the husband of victim Munni Bai appeared on the scene of occurrence, saw accused running and thereafter they disappeared without even taking Munni Bai to the house and leaving her to go all alone to the field of the husband with the food, appears to be most tin-probable.

4. Learned Public Prosecutor pointed out that broken bangles were recovered from the scene of the occurrence and that corroborates the prosecution case.

5. Shri K. N. Garg, the learned Counsel for the petitioner, pointed out that neither in the First Information Report, there is any mention, that bangles were broken, not in the inspection note of the site of the occurrence, there is any such note showing, that the broken bangles were lying there. In the case of it as suggested by the learned Counsel for the petitioner, the recovery made is afterthought, and concocted one.

6. I have carefully considered the respective submission made by both the parties and also gone through the police statement of Munni Bai her husband and two brothers of the husband of Munni Bai. Normally, in a case of rape, at the stage of investigation, question of bail cannot arise. It is all the more so " when the prayer is for the anticipatory bail.

7. However, intention of enactment of Section 438, Cr.P.C. was precisely to protect innocence persons from traps of false cases.

8. It would be improper and premature to express any opinion about the merits of the case. All that can be said is that as the police investigation stands today, the story which has been put by the prosecution witnesses, will have to undergo serious scrutiny for being believed. Prima facie, the conduct of the two brothers of the husband of Munni Bai who are alleged to have seen the accused running, in leaving Mst. Munni Bai, all alone and going to their house is a circumstance, which would require more cogent explanation from them to be believed. So also, non-mention of the broken bangles in the First Information Report and the site inspection report will have to be explained by the prosecution, to obtain conviction against accused. The inordinate delay will also require detailed explanation.

9. Looking to all the above circumstances, dealayed F. I. R., medical evidence, and other evidence which has been revealed during the investigation, I am of the opinion that this is eminently a fit case, where this Court should invoke the powers u/s 438, Cr.P.C. The legislature enacted Section 438, Cr. P. C, solely for protecting the accused from arrest, in such suspicious cases.

10. The result is that this bail application therefore, succeeds and is hereby accepted. It is ordered that in the eyent of arrest of the accused Abdul Mai id S/o Faqir Mohammed, by caste Muscleman, aged about 40 years, R/o Village Kadodia, P. S. Sunel, District Jhalawar, should be released on bail provided he furnishes a personal bond of Rs. 10,000/-(Rupees ten thousand only) with two sureties of Rs. 5,000/- each, to the satisfaction of the Station House Officer, Police Station Sunel, District Jhalawar, subject to the following conditions:?

(1) He shall make himself available for interrogation by a police officer as and when required:

(2) He shall not, directly or indirectly, make any inducement, threat, or promise

to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer:

(3) He shall not leave India without the previous permission of the Court.