
(2009) 06 JH CK 0030
In the Jharkhand High Court

Anil Kumar Das

APPELLANT

Vs

The State of Jharkhand and Kumari Anuja Das @ Pushpi

RESPONDENT

Date of Decision : 25-06-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 437, 439
Dowry Prohibition Act, 1961 — Section 3, 4
Penal Code, 1860 (IPC) — Section 323, 341, 498A

Citation : (2010) 7 RCR(Criminal) 861

Hon'ble Judges : D.K. Sinha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.K. Sinha, J.—Heard the learned Counsel for the parties.

2. This Cr. Revision application is directed against the order impugned dated 19th March, 2007 passed by the Additional Judicial Commissioner, VI, Ranchi in Cr. Misc. No. 12 of 2006 by which the bail granted to the petitioner u/s 437 Code of Criminal Procedure on 17.02.2006 by C.J.M., Ranchi in Doranda (Argora) P.S. Case No. 207 of 2003 corresponding to G.R. No. 2143 of 2003 was set aside and he was called upon to appear before the Court concerned to be taken into judicial custody.

3. The prosecution story in short as narrated by the informant-Opposite Party No. 2 (Kumari Anuja Das @ Pushpi) herein is reproduced hereunder:

Kumari Anuja Das @ Pushpi was married to the petitioner on 09.05.1997 and after the marriage the accused persons including the petitioner had been demanding colour T.V., fridge and cash to the tune of Rs. 1 lakh. When she expressed inability of her parents to meet out their demands, she was subjected to cruelty and mental harassment in various ways at the hands of the petitioner-husband and other accused persons who were none other than her in-laws. She anyhow came to Ranchi and filed a Complaint Case No. 269 of 2000 in the Court

of C.J.M., Ranchi against the petitioner and others. However, the accused persons pressurized her and a compromise was effected on 02.07.2000 and pursuant to that she went to her matrimonial home but again she confronted with the similar situation of torture and mental harassment for dowry at the instance of the accused persons. In the meantime, she became pregnant and she was sent to her parental home. None from her matrimonial home did take care to look after in spite of knowing the fact that a male child was born to her. On 24.06.2001 the petitioner along with other members of his family came to her parental home and reiterated demand of Rs. 80,000/- in place of Rs. 1 lakh. On 13.10.2002 the petitioner-husband again came there and forcibly obtained her signatures on blank papers in spite of her protest. Finding no way out she was taken by her father to her matrimonial home at Bhabhua (Bihar) where her father delivered a sum of Rs. 10,000/- to her father-in-law against the money demanded. Yet, the amount did not satisfy the greed of the accused persons and finally, the petitioner-husband attempted to commit her murder by strangulating her and also by making an attempt to set her body on fire after pouring k.oil. As the petitioner-husband was a police personnel in the service of U.P. Police, it was only because of intervention of the Superintendent of Police, Ranchi F.I.R. could be accepted, the informant added, which was registered as Doranda (Argora) P.S. Case No. 207 of 2003 for the alleged offence under Sections 341/323/498A I.P.C. and u/s 3/4 of the Dowry Prohibition Act.

4. It is evident from the record that the petitioner was admitted to bail u/s 437 Cr.P.C. on the day of his surrender by the impugned order dated 17.02.2006 recorded by the C.J.M., Ranchi in Doranda (Argora) P.S. Case No. 207 of 2003 on the following grounds:

The learned defence Counsel has submitted that it is a case of false implication. My attention has been drawn towards the facts that the other accused persons have been enlarged on bail in A.B.A.169 of 2004 by the Hon'ble Court. My attention has also been drawn towards the annexure in which it has been said that compromise was made and it is found that father of the informant had brought a false case. My attention has also been drawn towards the fact that matrimonial case No. 6/2000 was brought by this accused petitioner against the informant for restitution of conjugal rights and it will be apparent from the record that the informant never remained with the accused petitioner. It has been argued that after lapse of six years of marriage, the demand of dowry usually does not arise. My attention has been drawn towards the fact that after a few years of marriage, the status of bride and bridegroom converts into the status of wife and husband and in such a case provision of dowry act will not be applicable.

Considering all the facts and circumstances of the case, I am inclined to enlarge the petitioner on bail on furnishing bail bond for Rs. 5,000/- with two sureties of the like amount each.

5. But the order aforesaid passed by the C.J.M., Ranchi was set aside by the Additional Judicial Commissioner, 6th, Ranchi on 19.03.2007 by a detailed order

with the observation,

From the perusal of impugned order, I find that learned C.J.M. mentioned that he went through the record and found the prosecution false in connection with dowry. However, it is clear from the said order that learned lower court did not give his finding on the offence u/s 498A of I.P.C. directly and expressly for which there are specific allegations in the F.I.R. I further find that learned lower court relying upon the defence version has granted bail to the O.P. No. 2, taking shelter of the order of the Hon"ble court, wherein and where under rest of the co-accused have been granted anticipatory bail but para 2 of the said order of Hon"ble Court (Annexure-3) reveals that as per rest of the accused the O.P. No. 2 is only main offender of this case.

In the fact and circumstances, discussed above, I find that it is very surprising that learned lower court did not take notice of the para 2 of the bail application in which it has been mentioned that A.B.P. of the O.P. No. 2 has been rejected by the learned J.C. Ranchi. The reason as to why C.J.M. did not mention about such rejection in the order is best known to him. It is further relevant to mention that he did not take notice of the charge-sheet which shows that even after rejection of his A.B.P. O.P. No. 2 preferred to avoid his arrest and got him declared absconder. Role of the O.P. No. 2 as to his conduct is clear from the charge-sheet, para 3 of the C.D. and his appearance before the C.J.M. for taking bail after about 2 years of rejection of his A.B.P. as well as report of D.I.G.

In the aforesaid facts and circumstances, I find that learned lower court did not take notice of the annexure A (F.I.R.) and page 22 of it. Annexure A2 rejection of A.B.P. dated 29.1.04 and annexure A-4 entries in the charge-sheet. Had he taken notice of these documents he would have passed speaking order with elaborate discussion of evidence and then would have hardly taken decision to grant bail of the accused. I am surprised, as to under what circumstances, learned lower court did not take notice of the merit of the case and conduct of the O.P. No. 2, appearing from the said annexures and arbitrarily granted bail of the accused. Impugned order in my view is in departure to the settled principle of law given by the apex court in 2001(6) 338 Puran(appellant) v. Rambilash and Ors. (respondents). In the said case apex court has laid down that order of granting bail passed, by ignoring material evidence on record and without reasons would be perverse and contrary to law. It has further been laid down that such order would itself provide a ground for moving application for cancellation of bail.

6. The Apex Court in Puran Vs. Rambilas and Another etc. etc., held,

At the stage of granting bail a detailed examination of evidence and elaborate documentation of the merits of the case has not to be undertaken. What the Additional Sessions Judge had done in the order dated 11.09.2000 was to discuss the merits and demerits of the evidence. That was what was deprecated. That did not mean that whilst granting bail some reasons for prima facie concluding why bail was being granted did not have to be indicated.

7. With reference to *Dolat Ram v. State of Haryana* reported in 1995 S.C.C. 237, the Apex Court further held,

Rejection of bail in a non-bailable case at the initial stage and the cancellation of bail already granted have to be considered and dealt with on different basis. It has been held that very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail already granted. It has been held that generally speaking the grounds for cancellation of bail broadly 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. It is, however, to be noted that this Court has clarified that these instances are merely illustrative and not exhaustive. One such ground for cancellation of bail would be where ignoring material and evidence on record a perverse order granting bail is passed in a heinous crime of this nature and that too without giving any reasons. Such an order would be against principles of law. Interest of justice would also require that such a perverse order be set aside and bail be cancelled. It must be remembered that such offences(304B I.P.C.) are on the rise and have a very serious impact on the society. Therefore, an arbitrary and wrong exercise of discretion by the trial court has to be corrected.

8. Learned Sr. Counsel, Mr. P.P.N. Roy, appearing for the petitioner submitted with reference to the supplementary affidavit that on 23.02.2007 submission was made on behalf of the petitioner before the Additional Judicial Commissioner, 6th, Ranchi in Cr. Misc. No. 12/2006 that he was ready to file undertaking that he would withdraw all the cases filed by him in the courts at Bhabhua and Chandouli against the informant-O.P. No. 2 and against the members of her family without condition and that the informant O.P. No. 2 expressed her willingness to accompany and go with the petitioner if he could file the certified copies of the orders of various courts admitting and allowing withdrawal of such cases filed by the petitioner. Pursuant to that and in support whereof the petitioner had filed Xerox copies of the petitions filed in different Courts making prayer for withdrawal of Complaint Case No. 1008 of 2006, Matrimonial Case No. 06 of 2006 in the Court of Principal Judge, Family Court, Kaimur at Bhabhua, Bhabhua P.S. Case No. 353 of 2003, Case No. 1055 of 2004 and Case No. 28 of 2005 but the learned Counsel submitted that the O.P. No. 2 did not show any interest for the resolution of dispute, yet , there was a chance of amicable settlement of dispute between the husband petitioner and the wife O.P. No. 2. The Counsel pointed out that the O.P. No. 2 had expressed her willingness before the Additional Judicial Commissioner for amicable settlement of differences and the chance of resolution of dispute may be belied in case the petitioner husband is taken into judicial custody and this aspect was considered by the C.J.M., Ranchi while releasing him on bail.

9. On the other hand, the learned Senior Counsel Mr. R.S.P. Sinha appearing for the O.P. No. 2 vehemently opposed the contention and submitted that the

learned Additional Judicial Commissioner was justified in recording a detailed order dated 19.03.2007 by setting aside the impugned order dated 17.02.2006 passed by the C.J.M., Ranchi which in the facts and nature of allegation as also the conduct of the petitioner does not call for interference.

10. It is well settled that when a final order is passed on a petition u/s 439(2) of the Code of Criminal Procedure by the Additional Judicial Commissioner, 6th, Ranchi in Cr. Misc. No. 12 of 2006 setting aside the impugned order passed by the C.J.M. calling upon the petitioner to surrender with the direction to the court concerned to take him to judicial custody, the Court was ceased to pass further order in that Misc. Petition as the Court stands functus officio and need not have had entertained further petitions on behalf of either parties in the said Cr. Misc. Petition seeking prayer for interference in the final order passed by the Court. In the instant case, the offence was reported u/s 498A I.P.C. as also u/s 3/4 of the Dowry Prohibition Act with certain allegations related to demand of dowry by the petitioners and other accused persons and extending torture in this regard to the informant O.P. No. 2.

11. I find that the cognizance was taken only u/s 498A I.P.C. as also u/s 3/4 of the Dowry Prohibition Act after submission of the charge-sheet against the accused persons though there was also allegation of an attempt to commit her murder which was disbelieved during investigation. The prayer for anticipatory bail of the petitioner was earlier rejected by the Judicial Commissioner, Ranchi with the direction to the petitioner to surrender but he absconded for long two years and during such period the Investigating Agency had obtained arrest warrant against him. The petitioner surrendered on 17.02.2006 before the C.J.M., Ranchi and was admitted to bail on the same day on the grounds mentioned herein.

12. I find various cases and counter cases lodged against each other and still there was ray of hope for resolution of disputes between the parties, who are none other than the husband and wife and the justice in view of the submissions made on behalf of the petitioner demands amicable settlement.

13. I find that the learned C.J.M., Ranchi concisely reproduced the grounds in the impugned order which was argued before him and in my opinion the grounds discussed by the C.J.M. though was not sufficient to arrive at prima facie opinion but at the same time it cannot be held that he ignored the materials or evidence or that his order was perverse in considering the bail of the petitioner. However, the submissions that were made before the C.J.M. that demand of dowry after six years of marriage usually does not arise and that after such period the status of bridegroom and bride converts into husband and wife for consideration of bail of the petitioner cannot be held to be well founded. The offence recorded u/s 498A I.P.C. or u/s 3/4 of the Dowry Prohibition Act does not come within the purview of "heinous crime" so as to call for meticulous examination of the evidence produced on the record by the prosecution. It is well settled that at the stage of granting bail a detailed examination of evidence and elaborate

documentation of the merits of the case has not to be undertaken, rather a balance has to be maintained as per needs and the nature and gravity of the offence alleged with the supporting evidence. Even no overwhelming circumstances of the alleged offence has been produced on behalf of prosecution to call for interference in the order passed u/s 437 Code of Criminal Procedure.

14. I find that the learned Additional Judicial Commissioner, 6th, Ranchi erred by interfering with the due course of administration of justice by setting aside the concession granted to the petitioner u/s 437 Code of Criminal Procedure by the C.J.M., Ranchi which in my opinion, was uncalled for. The interest of justice, therefore, requires interference in the order passed by the learned Additional Judicial Commissioner, Ranchi and therefore, his order dated 19.03.2007 recorded u/s 439(2) Code of Criminal Procedure in Cr. Misc. No. 12 of 2006 is set aside.

15. This Cr. Revision is allowed by restoring the order of the C.J.M., Ranchi passed on 17.02.2006 by which the petitioner Anil Kumar Das was admitted to regular bail in Doranda (Argora) P.S. Case No. 207 of 2003 corresponding to G.R. No. 2143 of 2003 but with the modification that he would appear before the court concerned regularly and the bailers would be his near relatives and he would execute a fresh bail bond of the amount already fixed by the C.J.M., Ranchi supported with an affidavit.