

(2000) 08 MP CK 0004

In the Madhya Pradesh High Court

Case No : M.Cr. C. No. 4650 of 2000 (J)

Beshamlal

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 17-08-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 173(2)
Penal Code, 1860 (IPC) — Section 147, 323, 354, 376, 506

Citation : (2001) 2 MPJR 82

Hon'ble Judges : Ramesh Surajmal Garg, J

Bench : Single Bench

Advocate : Mukesh Pandey, for the Appellant; Ajay Tamrakar, Advocate, for the Respondent

Judgement

R.S. Garg, J.

Shri Mukesh Pandey, learned Counsel for the applicant.

Shri Ajay Tamrakar, learned Counsel for the State.

Case diary of crime No. 15/2000 registered at Police Station Kartala (Korba) for offences punishable u/s 354, 147, 323, 376 and 506 IPC, perused.

The prosecution allegations in the F.I.R. were that the applicant and some others misbehaved with the prosecutrix, outraged her modesty and man handled her father. In the F.I.R. itself it was shown that when she was insulted by the accused persons certain others had seen the incident and on their intervention she could be saved. Later on the prosecutrix started asserting that when she was taken to BADI the accused committed rape upon her. On these statements the prosecution in its wisdom has added a charge punishable u/s 376 IPC.

Submissions of the learned Counsel for the applicant are that there is variance between the F.I.R. and her statements recorded on 23.4.2000, therefore the applicant deserves to be released on bail. On the other hand, learned Counsel for

the State has opposed the application.

It is most unfortunate that despite repeated orders from this Court the Police/ Prosecution Agency is not trying to be a little fair to the accused. The Prosecution Agency while filing the challan is not expected to submit only those documents which support the case of the prosecution or the allegations levelled by the victim. It is not for the prosecution agency/police to pre-judge the matter and have the approach of vengeance. It is expected of them that without fear or favour and with fullest fairness they shall make the investigation and produce the entire material collected by them during the course of the investigation with the final report submitted u/s 173(2) of Cr.P.C.

Present is a case where the prosecution agency was absolutely unfair to the accused and at the same time the learned Court below did not discharge its duties in accordance with law. It is not expected of a Court of law that while considering an application for grant of bail it would only hear the argument of the parties, would be impressed by the nature of allegations and decide the application. The law enjoins rather casts a heavy duty on a Judge/Court hearing a bail application to see that an innocent person is not compelled to live in jail and a person who has committed the offence does not escape the punishment. While hearing an application for grant of bail, it is expected of every Judge/Court that not only it would hear the parties but shall also go through the case diary and documents contained in it.

The first information report in the present case was lodged on 19/4/2000. In the first information report the prosecutrix did not say that she was ravished by any of the miscreant. The allegations were that, the accused persons outraged her modesty. She had named certain persons who had witnessed the said incident. As the matter was registered u/s 354 and other sections it appears that the girl was not sent for her medical examination. Learned Counsel for the State submits that some Nurse had examined the prosecutrix and her private parts and after finding that there was some swelling on her private parts she made inquiries from the prosecutrix.

In support of the allegations made in the F.I.R. the prosecutrix and some other persons were examined on 20/4/2000. The unfairness of the prosecution came into play. The statements recorded on 20.4.2000 for the reasons best known to the police, investigating officer or public prosecutor, were not filed along with the challan papers. In the statements recorded on 20.4.2000 the prosecutrix clearly stated that the accused did not commit rape upon her. On 23.4.2000 the statements of the prosecutrix were again recorded. In the said statements she stated that accused Reshamlal had committed rape upon her and the true facts were not narrated by her to anybody because of the fear of her father. True it is that the girl was entitled to explain her conduct but it would also be true that while considering the application for grant of bail, the Judge was required to see the entire case diary. If somebody had seen the case diary at right time in its true perspective he could certainly find the statement dated 20.4.2000 wherein

prosecutrix did not level any allegations of rape against anybody. From the order passed by the learned Court below it does not appear that it intact read the case diary and had seen the statements recorded on 20.4.2000. When a man comes to the Court of law he reposes absolute confidence in the Judge and the system. If the system becomes bad or useless or the Judge does not act in accordance with law, the confidence is shattered and the image of the judiciary is tarnished. It is not expected of the Judges of the Lower Courts that being frightful or for reasons akin to it they would reject the bail applications even in deserving cases.

Taking into consideration the nature of allegations made in the first information report, the statements recorded u/s 161 Code of Criminal Procedure on 20/4/2000 and the conduct of the prosecution agency, I consider present to be a fit case for admitting the applicant to bail.

On applicant's furnishing a personal bond in sum of Rs. 10,000/- with one surety in the like amount to the satisfaction of C.J.M. Korba he be immediately released for his appearance before the said Court/trial Court and/or as and where so directed.

The Prosecution Agency is directed to file in the lower Court, the statements recorded on 20.4.2000. It is also expected of the trial Judge, whosoever he is, to see that the statements recorded on 20.4.2000 are filed in the Court because the prosecution agency is not entitled to withhold the material which helps the case and cause of the accused.

A copy of this order be also sent to the Additional Sessions Judge, Korba who had passed the order in bail petition No. 1044/2000.