

(2003) 08 DEL CK 0079

In the Delhi High Court

Case No : Criminal M. (M) No. 2626 of 2002

Bhagat Singh and Others

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 01-08-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 438
Penal Code, 1860 (IPC) — Section 34, 406, 498A

Citation : (2004) 1 AD 144 : (2003) 108 DLT 259 : (2004) 1 DMC 22 : (2003) 71 DRJ 530 : (2004) 1 JCC 161 : (2004) 2 RCR(Criminal) 75

Hon'ble Judges : Surinder Kumar Aggarwal, J

Bench : Single Bench

Advocate : Anand Maheshwari, for the Appellant; Pawan Sharma and Nayat Ahmed and Dinesh Yadav for complainant, for the Respondent

Judgement

S.K. Agarwal, J.—This is an application u/s 438 Cr.P.C. for grant of anticipatory bail in case FIR No. 215/2002 u/Ss. 406/498-A/34 IPC, P.S., Prasad Nagar, Delhi.

2. Petitioner no. 1 is the husband; petitioner no. 2 is father in law; petitioner no. 3 is mother in law; petitioners 4 and 5 are the married sister in laws and petitioner no. 6 is brother-in-law (Jeth). Learned counsel for the petitioners, at the outset, submitted that petitioner 2 and 3 were granted regular bail vide order dated 1st October, 2002; Therefore, their petition is dismissed as infructuous.

3. Learned counsel for the petitioner next argued that on 20.7.2000, petitioner No. 1 and his father were granted interim bail for one week to enable them to settle all matters with the complainant and to return dowry/Istridhan articles by the court of Additional Sessions Judge (for short "ASJ"). The disputes between the parties could not be resolved. Thereafter, petitioners 1 and 2 along with four other relations, namely, mother-in-law, sisters-in-law and brother-in-law (Jeth) of the complainant, filed a petition for bail. On 5.8.2002. Petitioner's counsel agreed to pay an amount of Rs. 1.5 lacs, without prejudice to the rights of the complainant, subject to the condition that in case the petitioners ultimately

succeed in the trial, the complainant would be liable to refund this amount. The amount was ordered to be paid to the complainant latest by 20.8.2002. Petitioners did not pay the agreed amount and filed the petition on 16.8.2002 in the Court. Notice was issued for 13.9.2002 and no interim protection was granted.

4. In the meantime, on 20.8.2002, the matter came up before ASJ and the bail petition was dismissed and the interim protection granted vide orders dated 5.8.2002 was withdrawn. Petitioners then moved CrI.M. No. 3480/2002 on 21.8.2002 and by orders dated 26.8.2002, they were granted interim protection, subject to their joining investigations as and when required. When the matter came up for hearing on 13.9.2002, none appeared on behalf of the petitioners and petition was dismissed for non-prosecution, however, it was restored on 19.9.2002. On 10.12.2002, the Court was on leave and on 26.3.2003, parties were referred to the Secretary, Delhi Legal Aid, Patiala House, New Delhi to enable them to settle the disputes and the matter was ordered to be listed on 1.8.2003. Parties have failed to settle their disputes.

5. Learned counsel for petitioner further argued that it was a second marriage between petitioner No. 1 and complainant which lasted about one month; in the previous marriage both, the petitioner and the complainant, had suffered similar litigation and that the complainant during the earlier litigation had settled for Rs. 30,000/- as against her claim of Rs. 5.0 lacs. Learned counsel argued that the trial court erred in directing the petitioner to deposit the amount of Rs. 1.5 lacs. In support of his submission reliance is placed on the decision of this Court in Dinesh Ahluwalia & Ors. v. State 2003(2) JCC 1093. Learned APP for State argued to the contrary submitting that petitioners have not approached this Court with clean hands; instead of fulfilling the undertaking given by them while their application was still pending before the ASJ, they approached this Court for grant of anticipatory bail; articles of Istridhan and jewellery are yet to be recovered, Therefore, they are not entitled to be released on bail.

6. In order to appreciate the rival contentions, it is necessary to refer to order dated 5.8.2002 passed by the learned ASJ granting interim bail of petitioners 1 and 2 and granting protection to petitioners 3 to 6. The order reads:-

"Parties have negotiated in my presence. They have agreed that for the time being the petitioner shall pay an amount of Rs. 1.5 lakhs without prejudice to the complainant. However, if the petitioners ultimately succeed in the trial, the complainant shall be liable to refund the amount. In view of this agreement, the petitioners be admitted to bail on furnishing a personal bond in the sum of Rs. 10,000/- with one surety each in the like amount.

Petitioners Shanti Devi, Hem Lata, Kum, Neelam and Netra Pal Singh shall be admitted to bail on furnishing a p/bond to the satisfaction to IO/SHO concerned in the event of their arrest and they will joined the investigations. The other two petitioners shall furnishing bail bond to the satisfaction of MM concerned.

The amount shall paid to the complainant latest by 20.8.2002. Put up on 20.8.2002.

Sd/-

A.S.J./5.8.02"

7. When the above application came up for hearing before learned ASJ on 20.8.2002, the same was dismissed as petitioners failed to abide by the agreement and failed to deposit the amount.

8. To re-call the facts on 27.7.2002, petitioners 1 and 2 were released on interim bail for one week on their plea that they want to settle the disputes with the complainant, which was not done. On 5.8.2002, petitioners 1 and 2 along with petitioners 3 to 6 filed another petition before ASJ and the parties negotiated in the presence of the Court. Petitioners agreed to pay Rs. 1.5 lacs, subject to the condition that if they ultimately succeed in the trial, the complainant shall be liable to refund the amount. In view of the agreement between the parties, the petitioners were granted interim protection. Mere perusal of the order dated 5.8.2002 reveals that there was no direction by the court to the petitioners to deposit the amount. The petitioners themselves negotiated and settled with the complainant. Once having settled in the presence of the Court, they cannot be heard in saying that their counsel had no such instructions. Apart from this, there is no such averment in the petition. Parties having settled the matter in the presence of the Court cannot be permitted to wriggle out unless there is material to show that some kind of fraud was played upon them. Sanctity of the agreement arrived at in the presence of the Court has to be maintained. In this case, filing of the petition in this Court during pendency of petition before the ASJ cannot be said to be bona fide. There is no merit in the petition and the same is liable to be dismissed.

9. At this stage, learned counsel for petitioner argues that petitioners 3 to 6 are distant relations and for fault of petitioners 1 and 2, they should not suffer. As noticed above, petitioners 1 and 2 along with petitioners 3 to 6 had filed a joint petition before the court of ASJ. The matter was negotiated on behalf of all the petitioners and they undertook to pay the amount of Rs. 1.5 lacs to the complainant towards her claim for unrecovered Istridhan articles. Therefore, petitioners 3 to 6, although distant relations of the complainant cannot be differently treated. Their application has also to be dismissed. The ratio of the decision cited by learned counsel for petitioner is not applicable to the facts at hand. Ordered accordingly.

10. It is, however, clarified that this order will not, in any way, prejudice petitioners' right to move fresh application(s) giving complete details and to seek bail on merits in accordance with law.