
(2020) 07 JH CK 0082

In the Jharkhand High Court

Case No : Bail Application No. 3386 of 2020

Dhullu Mahto @ Dhullu Mahato

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 31-07-2020

Acts Referred:

Indian Penal Code, 1860 — Section 34, 302, 307, 354, 376, 506, 511
Code Of Criminal Procedure, 1973 — Section 164

Citation : (2020) 07 JH CK 0082

Hon'ble Judges : Rongon Mukhopadhyay, J

Bench : Single Bench

Advocate : Indrajit Sinha, Sachin Kumar, Rajiv Kumar

Final Decision : Allowed

Judgement

1. Heard Mr. Indrajit Sinha, learned counsel for the petitioner and Mr. Sachin Kumar, learned Additional Advocate General for the State assisted by

Mr. Rajiv Kumar, learned counsel appearing for the informant.

2. The petitioner is an accused in connection with Katras P.S. Case No. 178 of 2019.

3. It has been alleged that on 13.11.2015, the petitioner who is a Member of the Legislative Assembly from Baghmara had made a call from mobile

no. 9279702831 to the mobile of the informant and requested the informant to accompany him to Ranchi which was refused by the informant. The

accused person had once again tried to contact her and persuade the informant to come for shopping but it was once again refused by the informant.

It has been alleged that a week thereafter the accused persons on the pretext of party work had invited the informant to a Guest House where the

petitioner along with Anand Sharma were present. The petitioner had tried to

outrage the modesty of the informant by inappropriately and indecently touching her body. She somehow managed to free herself and escaped. It has also been alleged that a few days later Anand Sharma had come to her shop and disclosed that if she accepts the advances of the petitioner she will be showered with riches and if she refuses she will be ruined by the petitioner. The informant alleges that the petitioner regularly called her at midnight and gave indecent proposals and threats were also extended by the musclemen of the petitioner.

4. Based on the aforesaid allegations Katras P.S. Case No. 178 of 2019 was instituted for the offences punishable under Sections 354, 376, 511 and 506/34 of the Indian Penal Code.

5. It has been submitted by Mr. Indrajit Sinha, learned counsel for the petitioner that after investigation the case has been found to be true under

Sections 354, 376, 511 and 506/34 of the Indian Penal Code as per the statements made in the counter affidavit. He has referred to the First

Information Report while stating that the alleged incident is said to have taken place in the year 2015 and the First Information Report was lodged on

23.11.2018 and such delay has not been properly explained. Mr. Sinha, submits that the co-accused Anand Sharma who is alleged to have acted on

behalf of the petitioner in the indecent proposals of the petitioner has been exonerated. While referring to the 164 Cr.P.C. statement of the informant

Mr. Sinha submits that as per her version after the petitioner committed rape upon her she rushed out and went to the shop with her husband who was

standing outside on a motorcycle but in spite of the same she remained tight lipped for three years. According to Mr. Sinha, even if it is assumed that

there was a threatening she had never disclosed in all these years as to who or what had been threatened. Continuing further learned counsel for the

petitioner submits that an online sanha was given by the informant but nothing has been brought on record as to what happened in the preliminary

inquiry. He has further drawn the attention of the Court to a letter dated 16.11.2018 addressed by the informant to the Officer-in- Charge of Katras

Police Station which was in connection with Katras P.S. Case No. 273/2018 lodged by the informant against one Ayodhya Thakur in which she had

threatened self-immolation and a copy of the said communication was also forwarded to the petitioner. The petitioner had never supported such act on

the part of the informant and therefore it led to lodgement of the case. Referring to the various cases instituted against the petitioner Mr. Sinha, submits that in most of the cases the petitioner has been acquitted. He has further submitted that after a change in the political dispensation several criminal cases have been lodged against the petitioner. He has also referred to certain dates to indicate victimization due to political rivalry. Mr. Sinha, submits that the anticipatory bail application was filed by the petitioner on 19.02.2020 and on 22.02.2020 the husband of the informant had filed a case regarding his abduction. The petitioner had surrendered on 14.05.2020 and filed a bail application before the learned Sessions Judge, Dhanbad on 21.05.2020 and immediately thereafter on 28.05.2020, 01.06.2020 and 04.06.2020 back to back cases were lodged against the petitioner. It has been summed up by Mr. Sinha, that the threats to the informant only resurfaced when the bail petitions came up for hearing which in fact indicates the motive of the informant.

6. Mr. Rajiv Kumar, learned counsel appearing for the informant has stated that on 23.11.2018 an online complaint was made by the informant against the petitioner but no First Information Report was registered due to the close proximity of the petitioner with the District Administration. It has been stated that it was only after she approached this Court in W.P.(Cr.) No. 178 of 2019 that Katras P.S. Case No. 178 of 2019 was registered. With respect to the delay in institution of the First Information Report Mr. Rajiv Kumar, learned counsel for the informant has stated that several factors are to be considered and he has relied upon various judgments of the Hon'ble Supreme Court in support of his contention. Mr. Kumar, further submits that the petitioner being a veteran criminal having a large number of cases instituted against him and being the local M.L.A. it was a primary reason for the informant to have not approached the Police immediately after the incident had taken place. Mr. Kumar, has stressed much on the 164 Cr.P.C. statement of the informant in which she had clearly stated about an act of forcible physical intimacy committed by the petitioner against the informant. With respect to the various cases in which the petitioner has been acquitted learned counsel submits that the same is mostly on account of the pressure and threats meted out by the petitioner by taking advantage of his position and his criminal background. In fact Mr. Rajiv Kumar, submits that

the informant had already been offered Rupees two crores for settlement of the case. He has also submitted that releasing the petitioner on bail would

amount to giving a license to the petitioner to tamper with the evidence since in the meantime one of the witnesses to the occurrence namely Zoya

Khatoon has already been gained over which would be apparent from the fact that she has filed a case against the husband of the informant under

Section 376 of the Indian Penal Code which was registered as Katras P.S. Case No. 71/2020. Mr. Rajiv Kumar, accordingly submits that the present

application is liable to be dismissed.

7. Mr. Sachin Kumar, learned Additional Advocate General has submitted that the petitioner was so influential that no First Information Report was

registered even in spite of the online complaint made by the informant. He has also submitted that the petitioner has accumulated criminal cases right

from 1997 and several cases have been lodged under Sections 307, 302 of the I.P.C., as well as under the provision of Arms Act. Learned Additional

Advocate General, further submits that the delay in lodgement of First Information Report is of no consequence if the background facts and the

supporting evidence are taken into consideration which in fact clearly makes out a case of rape as against the petitioner. He has also referred to the

statement of two of the eye-witnesses recorded in paragraphs 251 and 252 of the case diary who had seen the informant rushing out from the Guest

House in a dishevelled state. Learned A.A.G., adds that the petitioner has also been convicted in two cases and in view of the overwhelming nature of

evidence which has been collected the petitioner does not deserve bail.

8. Mr. Indrajit Sinha, learned counsel for the petitioner has replied by stating that if the informant was subjected to rape in the year 2015 it is not

known as to what prompted her to approach the petitioner in 2018 in the case of Ayodhya Thakur.

9. On consideration of the arguments advanced by the learned counsel for the respective parties the case diary has been perused. In the case diary

paragraph 4 contains the statement of Rajiv Kumar the husband of the informant who has supported the prosecution case and has stated that on the

date of occurrence she was called to the Guest House of Hindustan Zinc Limited at Tundu for discussing some matters concerning the 'Party'. He has

stated that the petitioner made an attempt to commit rape upon his wife who

somehow managed to save herself and rushed out and this witness had returned back to Katras with his wife to his shop. The evidence of Swaminath Gupta has been recorded at para 7 of the case diary in which he has stated that he is the caretaker of Tundu Guest House. This witness has further disclosed that in the last week of November, 2015 no one had come to the Guest House by the name of Kamla Kumari and neither had the petitioner come. He has denied about any occurrence having taken place as stated by the informant. Such version has been echoed by other witnesses which finds place at paragraphs 14, 15, 16, 17, 24, 25, 42, 43, 50 and 51 of the case diary. Para 73 of the case diary contains the statement of one Bitison Prasad whose jewelry shop is situated just besides the Beauty Parlor of the informant. He has denied having seen Anand Sharma coming to her shop and any nuisance having been created. Similar is the statement of some of the witnesses recorded at paragraph 74, 93, 94 and 95 of the case diary. Binay Singh whose statement finds place at para 108 of the case diary has supported the occurrence. He has further stated that the petitioner had unauthorizedly occupied the Guest House at Tundu and the persons who control the Guest House and stay nearby are all the henchmen of the petitioner. This statement has been supported by Jayram Das at paragraph 113 of the case diary. The restatement of the informant has been recorded at para 125 of the case diary in which apart from supporting the occurrence she had also disclosed about an application made to the Senior Superintendent of Police, Dhanbad for providing her an Armed Security Personnel for her safety. Para 130 contains the statement of Yasmin who has supported the occurrence as disclosed to her by the informant. The eye-witnesses whose statements have much been relied upon by the learned Additional Advocate General as well as by the learned counsel for the informant is at para 251 and 252 of the case diary in which the witnesses namely Sheikh Jahangir and Saddam have stated that they had seen the informant in a dishevelled state coming out from the Guest House with Anand Sharma following her. She had subsequently left the Guest House on her husband's motorcycle.

10. The 164 Cr.P.C. statement of the victim has been brought on record in which she has stated that the petitioner had committed rape upon her. She has also stated that she come out from the Guest House and had come back to

her shop with her husband who was standing outside the Guest House.

In the said statement the informant had further disclosed that she had stopped taking calls of the petitioner but she used to converse with the petitioner

in the phones of Anand Sharma and Ayodhya Thakur.

11. The entire evidence which has been brought on record coupled with the First Information Report and the 164 Cr.P.C. statement of the informant

reveals some startling facts. If at all the incident as alleged by the informant had taken place the aftermath of such alleged incident does not

emphatically support the occurrence. Learned counsel for the petitioner has primarily relied upon the delay in institution of the First Information Report

and there being no explanation to such delay apart from other grounds which have been enumerated above. The learned Additional Advocate General

as well as Mr. Rajiv Kumar, learned counsel for the informant has stated in unison that delay in a case of rape does not attain much significance as

various factors have to be considered before such ground is appreciated. Mr. Rajiv Kumar, learned counsel for the informant has referred to the case

of ""Sohan Singh and Anr. versus State of Bihar"" reported in (2010) 1 SCC 68, ""Ramnaresh and Ors. versus State of Chhattisgarh"" reported in AIR

2012 SC 1357, ""Deepak versus State of Haryana"" reported in (2015) 4 SCC 762 and ""P. Rajagopal and Ors. versus State of Tamil Nadu"" reported in

(2019) 5 SCC 403. Learned Additional Advocate General has referred to the case of ""State of Punjab versus Ramdev Singh"" reported in (2004) 1

SCC 421. All these cases have been referred by the learned Additional Advocate General as well as by the learned counsel for the informant to

counter the assertions made by Mr. Indrajit Sinha, that delay as in the present case is fatal to the prosecution in view of the inability of the informant to

explain the circumstances of such delay.

12. In the case of ""Sohan Singh and Anr. versus State of Bihar"" (supra) it had been held that it is difficult to appreciate the plight of the victim who has

been criminally assaulted in such a manner. In the said case the delay was only of one day in instituting the First Information Report. In the case of

Ramnaresh and Ors. versus State of Chhattisgarh"" (supra), there also a delay of one day had occurred in institution of the case and such delay was

explained by the prosecutrix. There was a delay of about two weeks in instituting a First Information Report in the case of ""Deepak versus State of

Haryana"" (supra) and while considering the delay it was held as follows:

19. We cannot overlook the situation in which a young illiterate girl, who had just crossed her 16 th year and who was subjected to sexual violence

against her will would immediately react.

13. In the case of ""P. Rajagopal and Ors. versus State of Tamil Nadu"", it was held that if the delay is satisfactorily explained the Court will decide the

matter on merits without giving much importance to such delay. It was also held that the Court is duty bound to determine whether the explanation

afforded is plausible enough given the facts and circumstances of the case. Similarly, in the case of ""State of Punjab versus Ramdev Singh"" (supra), it

was held that if the prosecution fails to satisfactorily explain the delay and there is possibility of embellishment in the prosecution version on account of

such delay the same would be fatal to the prosecution. Learned Additional Advocate General has also referred to the case of ""Chaman Lal versus

State of U.P. and Anr."" reported in (2004) 7 SCC 525 and ""Neeru Yadav versus State of Uttar Pradesh and Anr."" reported in (2014) 16 SCC 508,

which are with respect to the factors to be considered while granting bail.

14. What can be culled out from the judgments which have been referred to by the learned Additional Advocate General as well as the learned

counsel for the informant is that there has to be a plausible explanation in lodging the First Information Report after a delay and if such explanation is

acceptable the delay would not be of much importance in considering the merits of the case.

15. Viewed in the background of the factors which guide a question of delay in a case of rape the present case provides an altogether different

scenario. It is not in dispute that the incident as alleged by the informant had occurred in the year 2015 and the First Information Report was lodged on

23.11.2018. The written report does not indicate any explanation having been submitted by the informant regarding the delay in institution of the First

Information Report. Even in the 164 Cr.P.C. statement of the victim she has not hinted at any plausible explanation which might have hindered her

approaching the Police after a reasonable length of time from the date of the incident. It is also to be taken note of that if indeed the informant was

subjected to an immoral act by the petitioner what persuaded her to mark a copy of a complaint regarding slack investigation in Katras P.S. Case No.

273 of 2018 to the petitioner.

16. The conduct of the informant is also not aboveboard. In the 164 Cr.P.C. statement she reveals about continuing to converse with the petitioner

from the phones of Anand Sharma and Ayodhya Thakur in spite of such incident having already happened with her. The way the informant has acted

after the purported incident also raises a doubt as it has been stated in a matter of fact manner that she was ravished by the petitioner in the Guest

House and she came out where her husband was waiting with a motorcycle and left for her shop immediately and thereafter remained silent for about

three years. In such background facts the evidence of the witnesses who had seen her coming out from the Guest House recorded at para 251 and

252 of the case diary does not inspire confidence more so in view of a number of witnesses having stated that no such incident had taken place in the

Guest House at Tundu. The learned Additional Advocate General as well as the learned counsel for the informant have also harped about the criminal

antecedents of the petitioner. It has been stated by the learned counsel for the petitioner that out of 35 cases in 33 cases the petitioner has already

been acquitted. It also appears that several cases have been instituted after a change in the political dispensation in the State. It is to be noted herein

that the petitioner is a Member of the Legislative Assembly. There have been a plethora of cases instituted by the informant as well as her husband

and against them also by others which have been summarized by the learned counsel for the informant that the same was with a view to create

pressure upon the informant. The petitioner is in custody since 14.05.2020.

17. On consideration of the entire aspects of the case as denoted above, I am inclined to grant bail to the petitioner. The petitioner is accordingly

directed to be released on bail on furnishing bail bond of Rs. 10,000/- (Rupees Ten Thousand only) with two sureties of the like amount each, to the

satisfaction of learned Sub-Divisional Judicial Magistrate, Dhanbad in connection with Katras P.S. Case No. 178 of 2019.

(R. Mukhopadhyay, J.) Alok/-