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(1982) 05 RAJ CK 0010

In the Rajasthan High Court

Harji — APPELLANT

Vs

State of Rajasthan — RESPONDENT

Date of Decision : 17-05-1982

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 438
Official Secrets Act, 1923 — Section 3, 5
Penal Code, 1860 (IPC) — Section 364

Citation : (1983) CriLJ 1938 : (1982) RLW 620 : (1982) WLN 719

Hon'ble Judges : M.L. Shrimal, J

Bench : Single Bench

Judgement

M.L. Shrimal, J.—Heard learned Counsel for the parties.

2. The facts giving rise to this bail application are that on March 23, 1982. Rameshwar Sarpanch of Gram Panchayat Pancholi happened to pass through Bandikui for making purchases to celebrate some marriage function. He was forcibly abducted and removed to an unknown place. According to the F, I. R. the abductors, while taking him away, administered beating to him. A case No. 49/82 was registered at the police station, Bandikui, on March 28, 1982 wherein the names of the accused were not mentioned according to the author of the F.I.R. the identification and the names of the abductors were not known. From the affidavit filed before this Court, by the abducted person Rameshwar, it is revealed that the abductors demanded a ransom of Rs. 100000/-and compelled him to write a letter asking his son to bring the money. On April 1, 1982 Rs. 29,000/- were paid to Harji and thereafter Rameshwar was released. The affidavit further reads that the balance of Rs. 71000/- is being demanded and in the event of its nonpayment, there is the danger of his life. In support of this affidavit another affidavit by Radha Kishan has also been filed by the prosecution.

3. The case of the accused-petitioner is that he is a respectable person of his village. Prior to the occurrence Mst. Mooli, wife of the accused Kishan, had been taken away by Rameshwar''s nephew without making payment of ''Jhagda''

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amount, A Panchayat had been held and Rs. 29000/- had been settled as "Jhagda money" in the presence of the entire village, in pen. Harji had been called to attest the document and had been paid Rs. 29,000/-. A document indicating the same had been written. A photostat copy of it has been placed on record by the accused on April 1, 1982. It was urged that the petitioner is being made to pay penalty for altruistic act.

4. I have given earnest consideration to the arguments by the parties. There is no allegation to the effect that the petitioner has been implicated in the case on the ground of political rivalry. The document dt. 1-4-82 does not bear the signatures of either Rameshwar or his son or nephew or Mst. Mooli. Such a document could be prepared at any time. It hardly inspires confidence Ladies cannot be transferred as chattel.

The contention of the learned Counsel for the petitioner that the affidavits, filed by Rameshwar and Radha Kishan, are at variance with their police statements and as such the entire case should be held to be false and fabricated does not cut the ice. In The State Vs. Captain Jagjit Singh, bail application granted by the High Court was cancelled by the Honible Supreme Court. It was observed in that case that the High Court fell into basic error in dealing with the application for bail before it, as if the case was u/s 5 of the Official Secrets Act, it should have considered the matter, even if it did not consider it proper at that stage to decide the question whether offence was u/s 3 or Section 5 of the Official Secrets Act, on the assumption that the case fell u/s 3 of the Act. This case was followed in Rajkumar Sharma v. State Delhi Administration 1978 Cri LR 1 : 1978 Cri LJ 129. Thus it will be too much to say at this stage that the accused cannot be chal-laned u/s 110B read with Section 364 of the Penal Code on the basis of the bail the court is not required to judge whether such evidence is credible for conviction or not Truth veracity and effect of evidence is not required to be judged meticulously at the initial stage of the case. Reference with advantage may be made to State of Bihar Vs. Ramesh Singh,

5. There are various considerations, too numerous to enumerate the combined effect of which must weigh with the court while granting or rejecting the application the nature or seriousness of the proposed charges, in context of events likely to the making of the charges, a reasonable possibility of the applicant''s presence not being secured, the reasonable possibility of the offence being repeated for larger interest of public or State. Abduction of persons for ransom is a growing menace in the eastern part of Rajasthan, border area of Uttar Pradesh and Madhya Pradesh for details see India Today Vol. 7 No. 10 for the Fortnight May 16-31, 1982 page 128). The criminals who prey on the community or violate its fundamental values by their repressive and aggressive conduct and imperil the average citizen''s sense of security and confidence in law and order, should not be given benefit of Section 438, Cr. P.C. 1973 specially when there is danger of the repetition of the act. Well placed persons in life should not be allowed to ignore the law of the land and disturb the public

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tranquillity.

6. The freedom of the individual must harmonize with and not contradict with social good sense of security and public peace.

7. I would like to mention that nothing which has been observed in support of my order is meant and should be understood to prejudice in the least the case of either party at the trial.

8. If undeserving anticipatory bails are frequent, fear and faith in law vanishes, which is worse for social security. The function of the judiciary and the police are complimentary, not overlapping. The combination of individual liberty with a due observance of law by permitting the police to investigate a case freely without undue interference is necessary.

9. In the facts and, under the circumstances of the case the application stands rejected.

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