

(2017) 05 RAJ CK 0140
In the Rajasthan High Court
Case No : 4639 of 2017

Heera Lal S/o Shri Bhanwar Das Vaishnav	APPELLANT
Vs	
The State of Rajasthan	RESPONDENT

Date of Decision : 29-05-2017

Acts Referred:

Code of Criminal Procedure, 1973, Section 439 - Special powers of High Court or Court of Session regarding bail
Indian Penal Code, 1860, Section 302,
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Citation : (2017) 05 RAJ CK 0140

Hon'ble Judges : Sandeep Mehta

Bench : SINGLE BENCH

Advocate : Gaurav Singh, KV Vyas

Judgement

1. Heard learned counsel for the petitioner and learned Public Prosecutor. Perused the material available on record.
2. The instant bail application under Section 439 Cr.P.C. has been preferred on behalf of the petitioner who is in custody in connection with F.I.R. No.209/2016, registered at Police Station Gangapur, District Bhilwara for the offences under Sections 147, 149, 452, 323, 302 and 354 IPC and Sections 11/12 of the POCSO Act.
3. Learned counsel for the petitioner drew the Court's attention to the parcha bayan of deceased Pooja wherein she alleged that she was taking bath on 20.7.2016. Suresh was clandestinely watching her taking bath from roof top. She threatened Suresh

that she would complain of this indecency to her Mama. Upon returning to her home, she complained about the incident to her Mama. Thereafter, relatives of Suresh came to her house and started quarrelling. She was heating milk at that time and apprehending that her Mama would scold her, she poured kerosene on her body and immolated herself. Learned counsel for the petitioner also drew the attention of the Court to the statements of the witnesses Jagdish Chandra, Badri Lal and Lokesh, all of whom stated that Pooja set fire to herself upon being apprehensive of the actions of the accused persons. He thus urges that the dying declaration of Pooja recorded on the next day of incident by the Magistrate wherein she alleged that the present petitioner poured kerosene upon her and Suresh set fire to her is unbelievable and hence, the petitioner deserves to be enlarged on bail.

4. Learned Public Prosecutor vehemently opposes the submissions advanced by the petitioner's counsel. He relies upon the dying declaration of Pooja recorded by the Magistrate and urges that there is clear allegation in the said statement that Heera Lal poured kerosene and Suresh set fire to the girl and thus, the petitioner should not be released on bail.

5. I have given my thoughtful consideration to the arguments advanced at the Bar and perused the material available on record.

6. The FIR was lodged on 20.7.2016 on basis of the parcha bayan of deceased Pooja recorded by the S.H.O., P.S. Gangapur in the presence of the medical officer. In such statement, she alleged that she herself poured kerosene on her body and lighted fire. The said statement of the deceased is corroborated by the statements of the witnesses named above who are all her close relatives. The story was given a twist on the next day i.e. 21.7.2016 when the

dying declaration of Pooja was recorded by the Magistrate at Government Hospital, Udaipur. In this statement, she alleged that the petitioner poured kerosene on her person and thereafter, Suresh set her to fire.

7. In this background and having regard to the facts and circumstances as reflected from the record and particularly, significant contradictions appearing in the two statements of the deceased and considering that even in the dying declaration recorded by the Magistrate, the allegation of setting the deceased to fire is attributed specifically to Suresh, this Court is of the opinion that the petitioner deserves to be released on bail.

8. Accordingly, the bail application under Section 439 Cr.P.C. is allowed and it is directed that the petitioner Heera Lal arrested in connection with F.I.R. No.209/2016, registered at Police Station Gangapur, District Bhilwara shall be released on bail provided he furnishes a personal bond of Rs.50,000/- and two surety bonds of Rs.25,000/- each to the satisfaction of the learned trial court with the stipulation to appear before that Court on all dates of hearing and as and when called upon to do so.