

(2010) 04 KAR CK 0020
In the Karnataka High Court
Case No : Criminal Petition No. 1845 of 2010

K. Gopala

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 23-04-2010

Acts Referred:

Dowry Prohibition Act, 1961 — Section 3, 4
Penal Code, 1860 (IPC) — Section 304 B, 34, 498A

Citation : (2011) 1 DMC 536 : (2010) 6 KarLJ 122 : (2011) 8 RCR(Criminal) 126

Hon'ble Judges : Arali Nagaraj, J

Bench : Single Bench

Advocate : Y.S. Shivaprasad, for the Appellant; Vijayakumar Majage, High Court Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Arali Nagaraj, J.—The Petitioner, who is accused 1 in Crime No. 125 of 2009 of Mahila Police Station, Shimoga, pending on the file of the learned Judicial Magistrate First Class-II, Shimoga, has challenged the correctness of the order dated 19-3-2010 passed in Cr. R. P. No. 16 of 2010 by the learned Principal Sessions Judge, Shimoga, setting aside of the order dated 7-12-2009 passed by the learned Magistrate in the said case granting bail to accused 1 to 4 in the said crime.

2. Stated in brief the facts leading to the present petition are as under:

(a) This Petitioner and three other accused in the said crime are alleged to have committed the offences punishable under Sections 498A, 304B read with Section 34 of the Indian Penal Code, 1860 and also under Sections 3 and 4 of the Dowry Prohibition Act, 1961.

(b) During the pendency of the investigation, all the said four accused filed their application u/s 437 of the Code of Criminal Procedure, 1973 seeking bail. The learned Magistrate, by his order dated 7-12-2009 passed in the said case allowed

the said application and granted bail to all the accused 1 to 4 therein. Aggrieved by the said order, they preferred Cr. R.P. No. 16 of 2010 before the learned Principal Sessions Judge, Shimoga, who by his order dated 19-3-2010 allowed the said revision petition and the set aside the order passed by the learned Magistrate granting bail to all the accused therein.

3. Though this matter is listed today for admission, having regard to the nature of the relief sought for, it is taken for final disposal and the arguments of Sri Shivaprasad, the learned Counsel for the Petitioner (AI) and Sri Vijayakumar Majage, the learned High Court Government Pleader are heard. Perused the impugned order passed by the Revisional Court.

4. The learned Sessions Judge (Revisional Court) allowed the said revision petition and thereby set aside the order passed by the learned Magistrate granting bail to accused 1 in the said case holding that the learned Magistrate committed an error in granting bail to the said accused and others as the offence u/s 304B of IPC is triable exclusively by the Sessions Court and it is punishable with maximum sentence of imprisonment for life.

5. The Petitioner and other accused are alleged to have committed the offences under Sections 498A and 304B of IPC and also under Sections 3 and 4 of D.P. Act. Of these offences, the one u/s 498A is punishable with maximum sentence of imprisonment for three years and fine and the offence u/s 304B of IPC is punishable with sentence of imprisonment for not less than seven years, which may extend to imprisonment for life. Further, none of the offences under Sections 3 and 4 of D.P. Act is punishable with imprisonment for more than five years. Thus it is clear that none of the offences alleged against the Petitioner is punishable with minimum sentence of imprisonment for life. Sentence of imprisonment for life prescribed for the offence u/s 304B of IPC is neither the minimum sentence nor is it alternative to death sentence. On the other hand, it is the maximum sentence, which may be passed by the Trial Court having regard to the facts and circumstances of the case.

6. Section 437(1)(i) of Code of Criminal Procedure prohibits the grant of bail by the Magistrate if there appear reasonable grounds for believing that the accused has been guilty of an offence punishable with "death or imprisonment for life". The expression "death or imprisonment for life" has to be construed as "imprisonment for life" as the maximum sentence or as alternative to the "death sentence" but not as the maximum sentence prescribed for an offence. Therefore, I am of the considered view that the offence u/s 304B of IPC does not attract the bar u/s 437(1)(i) of Code of Criminal Procedure for granting bail to the present accused. Therefore, the approach of the Revisional Court that the learned Magistrate committed an error in granting the bail to all the accused 1 to 4 in the said case is not correct.

7. Further, Sri Shivaprasad, the learned Counsel for the Petitioner, placing reliance on the decision of this Court in the case of Muniswamy v. State of

Karnataka 1983 (1) Kar. L.J. 524 strongly contends that though the offence u/s 304B of IPC is triable exclusively by the Sessions Court, the learned Magistrate did not commit any error in granting bail to all the accused therein, including the Petitioner herein, after considering the entire material placed on record by the prosecution. It is observed in the said decision as under:

4. Section 437 of the Code empowers the Court other than the High Court and Court of Session to enlarge a person accused of an offence if he is brought or appears before it. Therefore, it is incumbent upon the Court to find out in a petition for bail as to whether there are reasonable grounds for believing that the Petitioner has been guilty of an offence punishable with death or imprisonment for life, if not it has to consider whether the accused person is entitled to be released on bail. Merely because it is stated by the Police that the person is accused of an offence punishable with death or life imprisonment, it does not absolve the responsibility of the Court to examine the petition on merits and to find out whether the Petitioner is or is not entitled for a bail. Even, in cases where the charge-sheet is placed for an offence punishable u/s 302 of the IPC, the Court will be perfectly within its jurisdiction to grant bail; if on examination of the facts and circumstances of the case and the material placed before it, is of the opinion that there are no grounds to believe that the accused person has been guilty of an offence punishable with death or imprisonment for life; and there is no other reason to decline a bail. Of course, the grant of bail is a discretion. But, it is a judicial discretion. It is the duty of the Court subordinate to the High Court to aid and assist the High Court in exercise of its power and discharge of its duties in the administration of justice. Apart from the fact that every judicial order must be supported by reasons, it also flows from the duty of the Court below to assist the High Court in the discharge of its functions, to give reasons for the conclusions it arrives at, so that the High Court must be in a position to satisfy itself whether the order of the learned Magistrate or the Sessions Judge, as the case may be, is sound and is sustainable.

8. In view of the above observations of this Court in the said case, I am of the opinion that the Revisional Court is not justified in setting aside the order dated 7-12-2009 passed in Cr. No. 125 of 2009 by the Judicial Magistrate First Class-II at Shimoga. Further, it is not in dispute that this Petitioner-accused has not misused the liberty granted to him by the learned Magistrate.

For the reasons aforesaid, I pass the following.-

ORDER

The present petition is allowed. The impugned order dated 19-3-2010 passed in Cr. R.P. No. 16 of 2010 by the learned Principal Sessions Judge, Shimoga, setting aside the order dated 7-12-2009 passed in Cr. No. 125 of 2009 of Mahila Police Station.