

(2006) 07 DEL CK 0102
In the Delhi High Court
Case No : Criminal M.C. No. 6670 of 2005

Kavita

APPELLANT

Vs

Govt. of NCT and Another

RESPONDENT

Date of Decision : 05-07-2006

Acts Referred:

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

Citation : (2006) 91 DRJ 39 : (2006) 4 RCR(Criminal) 484

Hon'ble Judges : Badar Durrez Ahmed, J

Bench : Single Bench

Advocate : Suresh Tripathim Adv, for the Appellant; Kuljiwan Goyal, for the Respondents, Richa Kapur, for the State, for the Respondent

Final Decision : Dismissed

Judgement

Badar Durrez Ahmed, J.

Allowed subject to all just exceptions.

1. This is an application for cancellation of bail granted by the learned Metropolitan Magistrate by his order dated 21.11.2005 to the applicant / complainant's husband.

2. The brief background leading to the filing of this application is that an FIR No. 486/2006 was registered at Police Station Srinivas Puri under Sections 498A/406/34 IPC against the complainant's father-in-law, mother-in-law and husband. An application for anticipatory bail u/s 438 Cr.P.C. was moved on behalf of the three accused. This Court, while disposing of that application, by an order dated 4.10.2005, allowed the same in respect of the father-in-law and mother-in-law but rejected the anticipatory bail application insofar as the husband of the complainant was concerned. While rejecting the application of the husband, this Court observed that the issue of alleged recovery of articles of Stridhan can be investigated through his custodial interrogation.

3. Subsequent thereto on 11.11.2005, the complainant's husband surrendered and was taken into judicial custody. After being in judicial custody, the said husband of the complainant moved an application for bail. The same was considered on several dates and ultimately, on 21.11.2005, the learned Metropolitan Magistrate released the complainant's husband on bail.

4. The learned Counsel for the petitioner submitted that the petitioner is aggrieved by this order dated 21.11.2005 whereby the husband has been granted bail. His main contention was that the High Court, while rejecting the anticipatory bail application of the petitioner's husband, had indicated that the alleged recovery of articles of Stridhan could be investigated through custodial interrogation. However, throughout the entire period during which the petitioner's husband was in custody, no custodial interrogation was carried out. As a result of which, the very purpose of rejection of the petitioner's husband's anticipatory bail application and his remaining in custody was negated. He, therefore, submitted that this is a fit case for cancellation of bail granted to the petitioner's husband by virtue of the order dated 21.11.2005.

5. The learned Counsel appearing on behalf of the petitioner's husband (Pradeep) submitted that it is not the accused's fault that custodial interrogation was not carried out. He submitted that as his anticipatory bail application had been rejected by the High Court, he had no option but to Surrender, which he did on 11.11.2005. Thereafter, it was within his right to apply for bail which he did and the learned Metropolitan Magistrate, after considering all the facts and circumstances, granted bail to the accused (Pradeep) after he had spent ten days in judicial custody. He submitted that the order itself cannot be faulted as there is no perversity in the same. Therefore, he submitted that this application for cancellation of bail should be dismissed.

6. I have considered the submissions made by the counsel for the parties. Insofar as the question of cancellation of bail is concerned, it is a well settled principle that it stands entirely on different footing from an application for release on bail. The considerations are entirely different. Unless the situations such as tampering with the evidence, threatening the witnesses, misusing the liberty granted etc., are made out, bail orders are not to be interfered with. Another ground for interfering with orders granting bail is if some perversity in the orders can be demonstrated. None of these situations have arisen in the present case and, therefore, there is no question of cancellation of bail granted to the accused (Pradeep). It is true that the petitioner may be aggrieved by the fact that the police authorities and, particularly, the investigating officer may not have carried out custodial interrogation. But that is no fault of the accused. Insofar as that grievance is concerned, the learned Counsel for the State points out that the order of the High Court as well as the relevant proceedings have been forwarded to the DCP by the learned Metropolitan Magistrate for information. It is expected that the DCP, on receipt of such information, will take appropriate action in accordance with law. Insofar as this application for cancellation of bail is

concerned, no grounds have been made out and, accordingly, the same is dismissed Dasti.