

(2012) 08 RAJ CK 0107

In the Rajasthan High Court

Case No : Criminal Miscellaneous Bail Application No. 6247 of 2012

Maresh Chand

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 06-08-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 299, 439
Penal Code, 1860 (IPC) — Section 323, 341, 384, 427, 447

Citation : (2013) 3 RLW 2234

Hon'ble Judges : Ajay Rastogi, J

Bench : Single Bench

Advocate : A.K. Gupta, for the Appellant; Sanjeev Mehla, PP, Shahid Hasan and Azad Ahmed for Complainant, for the Respondent

Final Decision : Dismissed

Judgement

Ajay Rastogi, J.—Heard learned counsel for petitioner, Public Prosecutor and so also counsel for complainant; and with their assistance, perused material made available at the time of arguments. Instant bail application u/Sec. 439 Cr. P.C. arises out of FIR No. 315/2011 registered for offence u/Sec. 323, 341, 447, 427, 506, 384 IPC read with Sec. 3-1(10)(5)(14) of Scheduled Caste/Scheduled Tribes (Prevention of Atrocities) Act.

2. The Id. court below, after taking note of the present accusation of the accused-petitioner and his past antecedents where almost 20 cases were registered against him, rejected the post arrest bail of the accused petitioner vide order dt. 6.6.2012.

3. From the facts available on record, it has come out that complainant Jawan Singh Koli, who is a member of Scheduled Caste community, submitted a written report on 14.9.2011 at 3.30 PM at Police Station Basedi, District Dholpur alleging therein that on 5.9.2011 at about 11.00 AM Mahesh (accused-petitioner), Tikam and Vinod, who are residents of village Nagala Darbesh, Police Station Basedi, District Dholpur came to his agricultural field bearing Khasra No. 1150 and

threatened him to sold the land to them as they want to sold after converting into residential plots and if he fails to do so, they will kill him and his family; and Mahesh (accused-petitioner), Tikam and Vinod started beating him and his wife (Urmila) and abusing him by passing sarcastic remarks denoting/indicating his caste. It was further alleged in FIR that these persons are not permitting him to cultivate his filed for last two years.

4. On the basis of said complaint, an FIR No. 315/2011 was registered on 14.9.2011 at Police Station Basedi for offence u/Sec. 323, 341, 447, 427, 506, 384 IPC read with Sec. 3-1(10)(5)(14) of Scheduled Caste/Scheduled Tribes (Prevention of Atrocities) Act and after registering FIR, statement of complainant was recorded u/Sec. 161 Cr. P.C. on 16.9.2011 where in he stated that he was threatened by the present accused petitioner, who was alleged to be a land grabber came alongwith other two accused persons namely; Vinod and Tikam to his house and asked him to surrender his agricultural land bearing Khasra No. 1150 and it is in his interest to sold the land to them as they are interested for disposing it of after converting in residential plots thereon and if he does not accept their offer, they will kill him and his family and they have also beaten him and his wife and he is not being permitted to cultivate his field for last two years.

5. However, the accused petitioner absconded and could not be arrested even after announcing a cash award of Rs. 2000/- for his arrest and charge sheet was filed against him u/Sec. 299 Cr. P.C. on 5.2.2012 for the alleged crime, however, he could be arrested thereafter on 7.5.2012.

6. Bail application was filed by the accused petitioner u/Sec. 439 Cr. P.C. before Id Trial Court however the court below rejected the bail application vide order dt. 6.6.2012 after examining the present accusation of the accused petitioner and his criminal antecedents as it reveals from the case diary that there are 20 cases of such like nature registered against the accused petitioner at different point of time and in five cases he is still facing trial.

7. Counsel for petitioner submits that except Sec. 384 IPC and Sec. 3-1(10)(5)(14) of Scheduled Caste/Scheduled Tribes (Prevention of Atrocities) Act, offence alleged against accused petitioner u/Sec. 323, 341, 447, 427, 506 IPC areailable and taking note of the statements of the complainant recorded u/Sec. 161 Cr. P.C., no case is made out which could book the accused petitioner for offence u/Sec. 384 IPC and Sec. 3-1(10)(5)(14) of Scheduled Caste/Scheduled Tribes (Prevention of Atrocities) Act. Counsel further submits that charge sheet has been Filed and no further recovery is required to be made from him and he is facing incarceration since 7.5.2012 and so far as the criminal antecedents of the accused petitioner is concerned, counsel submits that it is not relevant in any manner while examining the instant bail application. The court is supposed to examine the role of the accused petitioner in the instant accusation in which he has been charged and in the facts & circumstances of the instant case, no prima-facie case is made out so as to book the accused petitioner for offence u/Sec. 384 IPC and Sec. 3-1(10)(5)(14) of Scheduled Caste/Scheduled Tribes

(Prevention of Atrocities) Act and he deserves indulgence of post arrest bail u/ Sec. 439 Cr. P.C. and in support of submissions, counsel has placed reliance upon judgment of Apex Court in the case of Maulana Mohd. Amir Rashadi Vs. State of U.P. and Another, .

8. On the other hand, Id, Public Prosecutor and counsel for the complainant, while vehemently opposing the bail application, jointly submit that there is serious allegation against accused petitioner regarding extortion of money who belongs to downtrodden class of SC/ST community to whom special protection under the Special Act has been provided and it has been specifically alleged by the complainant that the accused petitioner is not permitting the complainant to cultivate his land for last two years and threatening to surrender his land and if he fails to surrender, the accused petitioner will kill him and his family and prima-facie charge was made out against accused-petitioner after the investigation was made and further submit that the criminal antecedents of the accused-petitioner, he appears to be a land grabber and there are number of such like cases registered against him and at least in five cases, he is facing trial for various offences of such like nature and it is not in the interest of the society as well to grant indulgence to the accused-petitioner of post arrest bail u/Sec. 439 Cr. P.C. and in support of the submissions reliance has been placed upon judgment of Hon"ble Supreme Court in the case of Prahlad Singh Bhati Vs. N.C.T. Delhi and Another, ; Ram Pratap Yadav Vs. Mitra Sen Yadav and Another, and so also in the case of Vijay Kumar Meena Vs. State, and taking assistance from the judgments of Hon"ble Supreme Court and so also this Court. Counsel submits that the relief of bail could not therefore be conducive in larger interest of the society.

9. It is well settled principle laid down by the Apex Court in catena of decisions that jurisdiction to grant bail has to be exercised having regard to the circumstances of each case and while granting bail the Court has to consider the nature of accusation, the nature of evidence in support thereof, the severity of punishment and conviction which entails the character, behaviour and standing of the accused and reasonable apprehension of the witnesses being tempered with but at the same time, the larger interest of public or State and similar other considerations are also to be kept in mind.

10. In Ram Pratap Yadav Vs. Mitra Sen Yadav and Another, the Hon"ble Apex Court has held as under:-

Be that as it may, it cannot be denied that previous conviction of an accused for a heinous offence punishable with imprisonment for life, his involvement in other crimes and the quantum of punishment for the offences in which the applicant is seeking bail are all relevant factors to which the Court should consciously advert to while taking a decision in the matter of enlargement on bail.

11. In Prahlad Singh Bhati Vs. N.C.T. Delhi and Another, , the Hon"ble Apex Court has held as under:-

The jurisdiction to grant bail has to be exercised on the basis of so well-settled

principles having regard to the circumstances of each case and not in an arbitrary manner. While granting on bail, the Court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character, behaviour, means and standing of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public or State and similar other considerations. It has also to be kept in mind that for the purpose of granting the bail the legislature has used the words reasonable grounds for believing instead of the evidence" which means the court dealing with the grant of bail can only satisfy it (sic itself) as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie, evidence in support of the charge, it is not expected at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt.

12. in Vijay Kumar Meena Vs. State, , the bail application of the accused petitioner was rejected on account of there being 17 criminal cases registered apart from the accusation under consideration and the Court observed in Para 3 of the judgment as under:-

3. Although pendency of a criminal case as such may not always be a bar for grant of bail but if it is shown that in spite of indulgence repeatedly shown by the Court as accused has been continuously misusing such liberty and involving himself time and again in similar and other nature of offences, this may by itself be a reason for refusal of bail. And that can be done if the court on the basis of material on record is satisfied that the accused has been repeatedly involving himself in so large number of cases and at such regular intervals, that he can be safely treated as a habitual offender. Grant of bail no doubt is an issue which concerns the liberty of a citizen. But at the same time, if an accused is shown to frequently and habitually indulge himself in commission of crimes one after the other and becomes a menace to the society, that liberty is required to be balanced against the larger interest of the society. Apart from merits of the case, when it is shown that he has been committing offences with impunity in such a manner that letting him free would again expose the society of the offences that such habitual offender might again commit, the bail application of such an accused can be refused on consideration of his antecedents alone.

13 In the above referred judgments, Hon"ble Apex Court, has considered involvement of the accused in other crimes, character & behaviour of such accused to be relevant factors which are always required to be taken note of by a court while taking decision in the matter of enlargement on bail and even though the criminal antecedents are always not determinative, the question whether bail has to be granted yet their relevance cannot be ignored. However, the judgment cited by counsel for accused petitioner in the case of Maulana Mohd. Amir Rashadi Vs. State of U.P. and Another, , was rendered in entirely different context

and the matter came up before the Apex Court was for cancellation of bail granted by the High Court. In that case, it was observed that in most of the cases, acquittal was for want of proper witnesses and while examining the accusation of the accused petitioner of the case in hand, which still are to be looked into but at the same time, criminal antecedents may not lose its relevance in totality. At the same time it has also been observed by Hon'ble Apex Court that society has a vital interest in grant or refusal of bail because every criminal offence is an offence against the State and the order granting or refusal of bail must reflect perfect balance between conflicting interests, namely sanctity of individual liberty and interest of society and it has always to be kept in mind that the law of bails dovetails two conflicting interests, on the one hand, the requirement of shielding the society from hazards of those committing crimes and potentiality of repeating same crime while on bail and on other hand absolute adherence of fundamental principle of criminal jurisprudence regarding presumption of innocence of an accused until he is found guilty and sanctity of individual liberty.

14. In the instant case, court below in his order of rejection dt. 6.6.2012 has taken note of these 20 cases registered against accused petitioner and even as on today, he is facing trial in four cases and one case is pending for investigation other than the present accusation wherein he has applied for grant of post arrest bail. It will be relevant to note the criminal antecedents of the accused petitioner, which has been noticed by the court below in its order of rejection dt. 6.6.2012 which reads as under:-

15. Apart from his criminal antecedents, even in the instant case, from the statement of complainant recorded u/Sec. 161 Cr. P.C., the accusation of the accused petitioner prima-facie is made out and despite being enlarged on bail on earlier occasions, he has certainly violated the conditions of bail granted to him and after committing the alleged crime, he was absconding and could not be arrested even after declaration of cash award of Rs. 2000/- for his arrest was ultimately arrested on 7.5.2012 in view of the aforesaid, it cannot be said that despite being repeatedly indulged in such like criminal offences one after the other and despite his involvement in large number of cases, the offender should still necessarily be granted post arrest bail just because he has applied for grant of bail. In view of above but without expressing any opinion on merits, the accused petitioner does not deserve indulgence for grant of post arrest bail. Consequently, the bail application stands dismissed. However, it is expected from Id. Trial Court to expedite the trial.