
(2001) 09 JH CK 0060
In the Jharkhand High Court
Case No : B.A. No. 5695 of 2001

Md. Ainul Ansari il Mian

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 14-09-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 164, 439
Penal Code, 1860 (IPC) — Section 363, 366, 376

Citation : (2002) CRLJ 851 : (2002) 0 AIR JHAR HCR 194 : (2002) AllCriLR 3 188

Hon'ble Judges : Vinod Kumar Gupta, C.J

Bench : Single Bench

Advocate : M.K. Dey, for the Appellant; APP, for the Respondent

Final Decision : Allowed

Judgement

V.K. Gupta, C.J.—This is an unique and a very peculiar case where a helpless victim of circumstances, more so created by a ridiculous order passed by no less a person than an Additional Sessions Judge, has to approach this Court for the redressal of his grievances.

2. It appears that some lady by the name of Rasmuni Manjhian might be having some friendly or other relationship with the petitioner. Both had been working in the C.C.L. at the relevant time. The lady admittedly is the mother of the informant. She is stated to be more than 40 years of age. It is no body's case that she is under 18 years of age, or that she was below 18 years of age as on the alleged date and time of occurrence of any alleged incident. In fact, interestingly, no incident as such is even alleged to have occurred in this case. Whether the lady and the petitioner at the relevant time had been having friendly relationship or were having some type of an illicit relationship is of no consequence as far as this case is concerned. I am saying so because a bare perusal of the first information report lodged by the informant, who is the son of the aforesaid lady, primarily suggests two things, clearly, glaringly and very very categorically; firstly that the lady and the petitioner might have been moving at

the relevant time from one place to another, of course with the consent of each other and secondly, that there has been no allegation whatsoever by any-one that the petitioner had any sexual intercourse with the lady against her will or without her consent. In fact, a reading of the First Information Report suggests that there is not even any allegation at all that the petitioner had any sexual intercourse at all with the lady.

3. It is also the admitted case of the prosecution that the lady ultimately herself came on scene. What is the version of the lady ? Did any statement of the lady, recorded by the police u/s 161, Cr PC reveal anything ? Answer seems to be that neither the police recorded any version of the lady u/s 161, Cr PC nor did the police take any steps in recording her statement u/s 164, Cr PC. Obvious inference is that neither the lady was kidnapped or abducted by the petitioner, nor had ever she been taken illegally by the petitioner from one place to another, with or without her consent or will. As far as the kidnapping is concerned, it is totally and strictly ruled out in this case because the lady admittedly was of more than 18 years of age. She is stated to be above 40 years old. She is an old mother of the informant.

4. Now one thing which cries for my attention is as to why, in view of the above referred facts and circum-stances, did the learned Additional Session Judge have to reject the bail application of the petitioner ? Just because the charges against him carried a label of Sections 363, 366 and 376 of the Indian Penal Code ?

5. It is a very sad matter, where a Judicial Officer of the rank of the Additional Sessions Judge with total non-application of mind, by a bare mechanical exercise of judicial discretion and by a totally neglectful exercise of the Jurisdiction vested in him, has rejected the bail prayer of the petitioner, even "though on a bare reading of the First Information Report and on a bare perusal of the case diary, no offence could prima facie be said to having been committed by the petitioner at all.

6. Even a bare reading of the impugned order dated 26.6.2001 passed by the learned Court below makes a very sad and ridiculous reading. In the entire order, the learned Court below has stated the facts and circumstances of the case, in such a narrative, which clearly point out, even according to the Court's own understanding that the petitioner does not appear to have done any act which might amount to committing any offence, much less offences punishable under Sections 363, 366 and 376 of the IPC. The entire order from the very first sentence in the first paragraph till its penultimate para is replete of such narration of facts which leaves no-one in any doubt that the sequence of the events have been described in such a manner that the petitioner appears to be an innocent person. Yet, in the last para of the order, in its operative part, the learned Court below refuses to grant bail to the petitioner because in the words of the learned Court below "nature of the offence as also the fact that the petitioner is named in the FIR", made him think that he did not deserve to be enlarged on bail. Someone may ask the learned Court below as to what was that

"nature of the offence" which prevented him from bailing out the petitioner ? Someone may also ask the learned Court below as to whether, merely because a person's name is in the FIR, that by itself, without any reference to any other fact or material, would disentitle that man from the grant of bail ? Merely because someone is named in the FIR, does such mention of his name in the FIR, absolutely absolve the Court of law from looking into the FIR to find out whether the alleged offence, prima facie, and apparently might have or might not have been committed by such a person. Does the Court have no duty to look into relevant facts while deciding a judicial matter before it ? Just because someone's name appears in the FIR does it mean that his bail-application must under all circum-stances, without any consideration to its merits, and without any application of mind, by a mere mechanical exercise of jurisdiction be rejected ? Further, does it also mean that merely because a person's name figures in the FIR without there being any evidence and without any finding by the Court as to whether he committed the offence or not, at the end of a trial, he must also be convicted? This is absolutely absurd and totally unacceptable. This sort of tendency on the part of the Court must be stopped. It is high time that the Judicial Officers must apply their minds, properly and thoroughly and by a judicial exercise of their discretion, they must decide whether, on the facts and circumstances of a case, an accused, who has applied for grant of bail to a Court, should or should not be enlarged on bail.

7. Section 439 of the Code of Criminal Procedure, 1973 gives special powers to the High Court and the Court of Sessions regarding the grant of bail. While exercising this power, the Court is required to keep in mind the settled principles of law and one such time, tested settled proposition of law is that if in the opinion of the Court, by a prima facie consideration of the material on record, it apparently appears that the accused might not have committed the offence for which he has been charged, denial of bail is an exception and the grant is a" rule. In the present case, however, it appears to me that the learned Court below disregarded this salutary principle of law and by ignoring Section 439 in its proper application rejected the bail application of the petitioner.

8. The impugned order really makes a very sad reading. It does show clearly that the learned Court below in hot haste and in total disregard "to established principles, of law, without any application of mind and patently wrongly rejected the bail application of the petitioner. The petitioner does not appear to have committed any offence", especially any offence punishable u/s 376 or 366 of the IPC.

9. For these reasons, therefore, while quashing the impugned order, I allow his bail application and direct that he, that is, Md. Ainul-Ansari @ Md. Ainul @ Khalil Mian shall be enlarged on bail on his furnishing a personal bond in the amount of Rs. 2.000/-(Rupees two thousand) to the satisfaction of Additional Chief Judicial Magistrate, Bermo at Tenughat, in connection with Bokaro P.S. Case No. 14/2001 (G.R. No. 229/2001).

10. A copy of this order shall be circulated to all the Courts in the State of Jharkhand for their information and compliance in future cases.

11. Bail application allowed.