

(2009) 05 CAL CK 0019
In the Calcutta High Court
Case No : C.R.M. No. 5010 of 2009

Mrs. Sonia Bhattacharjee

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 22-05-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 406, 498A

Citation : (2009) 3 CALLT 421

Hon'ble Judges : Ashim Kumar Roy, J

Bench : Single Bench

Advocate : Swapan Kumar Mallick, Mr. Shiladitya Sanyal, Mr. Suman De, Mr. Sumanta Gupta, Mr. Navanil De, Mr. Joyishnu Basu, Mr. Dipten Konal and Mr. Sirsendu Sinha Roy, for the Appellant; Asimes Goswami, Prabir Mitra and Mr. Debobrata Roy for State, Mr. Sudipta Moitra, Rajdeep Majumdar and Mr. Abhro Mukherjee for O.P. Nos. 2 and 3, Mr. Joy Sengupta and Mr. Angshuman Chakraborty for O.P. No. 4, for the Respondent

Judgement

Ashim Kumar Roy, J.—Against an order passed by the Learned Chief Judicial Magistrate, Alipore granting bail to the accused /opposite party Nos. 2, 3 and 4 in connection with Bhowanipur Police Station Case No. 91, dated April 6, 2009 under sections 498A/406 of the Indian Penal Code, the defacto-complainant moved this application seeking annulment of the said order and for cancellation of their bail.

2. Mr. Swapan Kumar Mallick, the learned counsel appearing on behalf of the petitioner at the very outset submitted that although this application has been moved invoking this section 439 (2) of the Code of Criminal Procedure, nevertheless, cancellation of bail is not sought for on the mere ground of misuse of liberty by the accused, but on the ground the very order of granting bail is not in accordance with law. He further submitted that on April 4, 2009, the FIR of the case was recorded against the accused/opposite party Nos. 2 to 4 and others and on the self-same day the said accused/ opposite parties surrendered before the learned additional Chief Judicial Magistrate, Alipore and prayed for bail, and the

learned Magistrate without considering the Case Diary and on the concession shown by the learned Chief Public Prosecutor allowed their prayer for bail, although there were specific allegations against them. He further submitted no reason has been assigned for granting bail and according to him when there is specific allegation against the accused/opposite parties it was not at all justified for the learned Court below to allow their prayer for bail on the very first day of their surrender in Court without considering the Case Diary. Mr. Mallick in support of his submissions relied on the following decisions of the Apex Court:

- (a) *Puran v. Rambilas & Anr.* reported in 2001 SCC (Cri) 1124,
- (b) *Dinesh M.N. (S.P.) v. State of Gujarat*, reported in (2008) 2 SCC 508,
- (c) *Lokesh Singh v. State of U.P. & Anr.*, reported in 2009 Cri LJ 369,
- (d) *Kumari Suman Pandey v. State of U.P. & Anr.*, reported in (2008) 1 SCC (Cri) 394,
- (e) *Deepak Singchi v. State of Rajasthan & Anr.*, reported in (2009) 1 SCC (Cri) 904.

Mr. Mallick also relied on a decision of this Hon'ble Court in the case of *Pankaj Lall Roy v. State of West Bengal & Anr.*, reported in 2001(1) CHN 239.

3. On the other hand, Mr. Sudipto Moitra, the learned counsel appearing on behalf of the accused/opposite party No. 2 and 3 strongly repudiated the submissions of Mr. Mallick and submitted that the order of granting bail is wholly justified and no interference is called for. He further submitted that the aforesaid FIR was lodged by the petitioner nearly four months after she ; was allegedly driven out from her matrimonial home and that too after receipt of the summon of the divorce suit instituted by her husband. Mr. Moitra submitted that all the members of the family of her husband have been implicated in this case by making false allegations. Mr. Moitra vehemently urged since there is no iota of allegations that after being released on bail the accused/opposite parties have misused their liberty the question of cancellation of bail does not at all arise. In support of his submission Mr. Moitra relied on the following decisions.

- (a) *Dolat Ram & Ors. v. State of Haryana*, reported in 1995 SCC (Cri) 237,
- (b) *Mehboob Dawood Shaikh v. State of Maharashtra*, reported in 2004 SCC (Cri) 551,
- (c) *Ashok Kumar Vs. State of U.P. and Another*, .

4. Initially in this matter Mr. Prabir Mitra, advocate was appearing on behalf of the State and subsequently as Mr. Mitra was not attending Court due to some personal reasons, Mr. Asimes Goswami, the learned Public Prosecutor with Mr. Debabrata Roy, advocate appeared and finally argued this matter. According to the learned Public Prosecutor the order impugned is absolutely illegal and ought to be set aside. Mr. Goswami contended no Court should allow the prayer for bail

of any accused on the very first day of his surrender in Court without considering the Case Diary. According to him the impugned order of bail is to be cancelled for the simple reason, the same was granted without taking into consideration the Case Diary and merely on the concession shown by the Counsel of the State.

5. I have given my anxious consideration to the rival contentions of the respective parties, perused the materials on record, considered the case laws referred by them. I have also perused the Case Diaries produced in Court by the learned advocate of the State Mr. Prabir Mitra from time to time.

6. Indisputably if High Court concluded that an order granting bail suffers from non-consideration of relevant materials which clinches the issues or the decision of the Court granting bail was swayed by irrelevant consideration and where such order of bail does not bear reasons for prima facie conclusion as to why an accused charged with a serious offence has been granted bail, it is always open to the High Court to reverse such an order and cancel the bail. In such a situation absence of a supervening circumstance is of no significance.

7. In both the aforesaid cases namely *Puran v. Rambilas & Anr. (supra)* and *Dinesh M.N. (S.P.) v. The State of Gujarat (supra)*, heavily relied upon by Mr. Mallick, the accused persons were charged with serious offences like offences punishable under sections 304B/498A of the Indian Penal Code with "rigorous imprisonment not less than seven years and which may be extended upto imprisonment for life and the offences punishable under sections 302/364/365/368/193/197/201/420/342/120B of the Indian Penal Code read with section 25 (1-B) (a)/27 of the Arms Act with capital sentence or with Imprisonment for life and other term of imprisonment.

8. In the first case the Apex Court upheld the order of the High Court which reversed the order of granting bail on a finding that there were prima facie evidence suggesting that there was a demand of dowry of rupees seven lakhs at the time of marriage and although the said amount of money was spent by the father of the victim, still there was further demand. The Apex Court also found from the post-mortem report several burn injuries and blisters on the different parts of the body of the victim, who was pregnant for eight months. One more reason for which the Apex Court upheld the order of High Court, is this, that the Sessions Judge has gone into the merits and demerits of the evidence collected against the accused.

9. Similarly, in the next case the Apex Court found that while granting bail, the Court below swayed by the consideration that the victim who was killed by the police in an encounter and was a hardened criminal having shady reputation and criminal antecedents. The Apex Court also found the victim was killed in a fake encounter.

10. Thus, in the aforesaid two cases the Supreme Court interfered with the order of granting bail where the offences are very serious in nature involving death of person and punishable with imprisonment for life or capital sentence and on the

ground in the first case the decision of the Court granting bail was vitiated due to non-consideration of relevant materials and in the second case due to taking into account the irrelevant materials.

11. The remaining cases relied upon by Mr. Mallick namely the case of Lokesh Singh v. State of U.P. & Anr. (supra), Kumari Suman Pandey v. State of U.P. & Anr. (supra), Deepak Singchi v. State of Rajasthan & Anr. (supra), in all the said three cases the accused persons were charged with serious offences like murder and it was the ratio-decidenti in those cases that the reason must be indicated in the order why bail has been granted to an accused particularly when he was charged with the commission of a serious offence and his prayer for bail was rejected on several occasions by the High Court. The Apex Court in those cases stressed upon the need of indicating reasons in the bail order, why accused who has been charged with a serious offence has been granted bail, without discussing the merits and de-merits of evidence. The Apex Court further pointed following factors to be taken into consideration before granting of bail:

(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.

(b) Reasonable apprehension of tampering of the witness or apprehension of threat to the complainant.

(c) Prima facie satisfaction of the Court in support of the charge.

12. So far as the case in hand is concerned, indisputably the approach of the learned Magistrate is clearly erroneous and improper and really unfortunate. The way in which the learned Magistrate passed the impugned*^ order, is strongly condemned. The learned Magistrate should not have granted confirm bail to the accused persons without considering the Case Diary on the concession shown by the learned Chief Public Prosecutor. The question of bail always be considered judiciously and must be an independent decision of the Court, irrespective of the opinion expressed by the Counsel of the State. The decision of the Court does not depend on the stand taken by the State. The learned Magistrate if after considering the nature of allegation made in the FIR against the accused persons and the other factors viz. the nature of the offence, the severity of the punishment in case of conviction, chances of abscontion, thought it fit that there was no necessity of detaining the accused persons in custody till the production of the Case Diary, in that case the learned Magistrate was in no way precluded from releasing the accused on interim bail and then to pass the final order of bail after considering the Case Diary. It is desirable, in future the learned Magistrate must be very careful and cautious and shall not repeat the same mistake, otherwise public confidence in the administration of justice by the Court would be lost.

13. The Registrar General of this High Court is directed to bring this order to the notice of the concerned Magistrate and he be apprised of the strong dissent of this Court.

14. Be that as it may, now the only question arises for consideration, whether on the face of the allegations made in the FIR and the evidentiary materials collected during investigation, the petitioners are otherwise entitled to retain their liberty of bail or the order of bail deserve to be interfered with by canceling the same.

15. Having gone through materials on record, more particularly the Case Diary and the First Information Report, I find as follows:

(a) The accused/opposite party No. 2 and accused/opposite party No. 3 are the uncle-in-law and aunt-in-law/ of the complainant, whereas the accused/opposite party No. 4 is her married sister-in-law.

(b) The allegations against the said accused/opposite parties are this that they were also living at her matrimonial home where the complainant was residing together with her husband and her parent-in-law. After her marriage when she went to her matrimonial home her mother-in-law, father-in-law, her husband and other accused persons took away all her jewelleries on the pretext of keeping the same in their safe custody and subsequently inspite of repeated requests none of those jewelleries were handed over to her. All the accused persons used to taunt her and her family members over their social status and financial background.

Lastly, she alleged that all her stridhan articles are lying in the custody of her mother-in-law and husband and steps may be taken by the

police for recovery of the same otherwise, the same would be misappropriated by her husband and parents-in-law. (c) The aforesaid complaint was lodged to the police on 5th of April, 2009, whereas according to her own admission she was driven out from her matrimonial home on 5th December. 2008.

No reason has been assigned as to why the complaint was made after about four months from the date she was driven out from her matrimonial home.

(d) No further allegation has been found against the accused/opposite parties from the 161 statement of the complainant and the witnesses.

Besides above I find that the aforesaid complaint was lodged after receipt of the summons of the divorce suit instituted by her husband against the complainant and during the pendency of this application there is a development in the case and the police has recovered almost all her stridhans from her husband and parents-in-law except the jewelleries. Moreover, the accused/opposite party No.2 is a businessman and the accused/opposite party No. 3 his wife is the Vice-Principal of a well-known school of Calcutta and the accused/ opposite party No. 4 is a working lady. They are the permanent residents of Calcutta. They have no criminal antecedents. They have been arraigned as accused for commission of offences punishable under sections 498A/406 of the Indian Penal Code punishable with imprisonment up to three years. The case against them does not relates to any serious offences like murder, rape, dacoity etc. The accused/ opposite parties are on bail for a considerable period and there is no allegation

that they have made any attempt to pollute the course of Justice. Thus, even though there are some infirmities in the order of granting bail, still, I am of the opinion it would not be appropriate for this Court to interfere with the same and cancel the bail of the accused/opposite parties.

16. Last but not least, in connection with this case the Investigating Officer produced the Case Diaries in two parts, first part on April 30, 2009 and the next part on May 4, 2009. It appears the first part of the Case Diary produced on April 30, 2009 were not in prescribed form in terms of the mandate of section 172 of the Code of Criminal Procedure, read with the provisions of Regulation 71 under Chapter V of the Police Regulation of Calcutta. However, the second part of the Case Diary which was produced on May 4, 2009 is in prescribed form. I do not find any reason why the Case Diary was not maintained by the Investigating Officer in the prescribed form which was produced on April 30, 2009, which in my opinion, is not at all proper. However, I do not propose to recommend any action against him for the same on his apology tendered before this Court. He must be very careful in future in conducting the investigation.

17. The instant application stands disposed of in the above terms.

The criminal section is directed to supply the urgent Xerox certified copy of this judgment within four days from the date of making such application