

(2019) 05 J&K CK 0041

In the Jammu And Kashmir High Court

Case No : Bail Application (B.A) No. 163 Of 2018, IA No. 01, 02, 03 Of 2018, 01, 02 Of 2019

Munshi Khan And Another @APPELLANT@Hash State Of Jammu & Kashmir Another

Date of Decision : 17-05-2019

Acts Referred:

Code Of Criminal Procedure, 1898 — Section 561A
Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 307, 323, 354, 354B
Code Of Criminal Procedure, 1973 — Section 161, 164A,

Citation : (2019) 05 J&K CK 0041

Hon'ble Judges : Sanjay Kumar Gupta, J

Bench : Single Bench

Advocate : Anil Sethi, A. M. Malik

Final Decision : Dismissed

Judgement

1. Heard.

2. Petitioners seek grant of bail in FIR No.154/2018 dated 06.09.2018 registered with Police Station, Thanna Mandi against the petitioners for the commission of offence under Sections 323, 354 and 307 RPC.

3. It is stated in the petition that the petitioners are law abiding citizens. The petitioners have been locked in litigation over the land with the private respondent/complainant. The matter is presently pending before the Court where the parties are agitating their rights over the land in issue. Since the FIR in question was an outcome of hostility and offshoot of civil litigation between the parties, therefore, the petitioners approached this Court and relying on the judgment of Hon'ble Supreme Court of India delivered in Bhajan Lal vs. State of Haryana and filed petition under Section 561-A Cr.P.C. (CRMC No.609/2018) for quashing the FIR in question. This Court has directed the respondents not to present the challan in the matter. In view of the interim order passed in APPCR No. 63/2018, charge sheet is not likely to be filed and investigation on the other hand is almost complete. The FIR being an outcome of hostility has been lodged

with a view to wreak vengeance and to settle scores and to compel the petitioners to compromise the litigation with regard to land and the FIR is to be adjudicated upon by this Court in petition under Section 561-A Cr.P.C. Under these circumstances when the proceedings in the challan have been stayed by this Court, the Investigating Officer cannot proceed further into the matter and the order of granting interim bail also needs to be extended and made co-terminous with the final decision in the petition under Section 561-A Cr.P.C. The petitioners even if approached the Court of learned Session Judge, Rajouri would be able to secure the anticipatory bail or get it extended beyond a period of 10 days from the date of order i.e., 13.09.2018 because the investigation in the matter cannot proceed further now. Because the investigation to further proceed in the matter is stayed, therefore, there is no requirement of the petitioners approaching the police either for custodial interrogation or to present themselves before it for further investigation purposes. The petitioners during the 10 days started from 13.09.2018 have been approaching the Investigating Officer and cooperating with the investigation. The petitioners have regularly attended the investigation from 13th onwards and have not been detained or arrested or put to custodial interrogation. The so-called injured girl who was projected as injured victim did not receive any injury much less serious injury. She is regularly attending her school i.e., Government Degree College, Thannamandi for pursuing her studies. Because of the peculiar facts which could arise on account of staying of the challan in question to approach this Court for grant of regular bail has arisen. This Court possesses the power to admit the petitioners to bail in the FIR in question till such time the issue of quashment of the FIR is finally adjudicated upon. The petitioners undertake to abide by all such terms and conditions as are imposed by this Court while admitting the petitioners to bail.

4. Status report of the case has been filed by the respondents stating therein that on 06.09.2018 complainant, namely, Manir Hussain S/o Ghulam Hussain R/o Plangerh Tehsil Thanamandi lodged a written report at Police Station, Thanamandi to the effect that on the day of occurrence i.e. 06.09.2018 the daughter of complainant, namely, Rabia Kouser was grazing her cattle in her pasture land at Palangerh. One Khalid Tanveer S/o Munshi Khan R/o Plangerh, Tehsil Thanamandi came there and forcibly caught his daughter from breast and attacked upon her head with an Axe with intention to kill his daughter and also outrage her modesty. On hue and cry, complainant came on spot. Meanwhile, father of alleged accused, namely Munshi Khan S/o Gulla also came on spot and beat him and her daughter harshly and threatened her of dire consequences. On this a case FIR No.154/2018 for commission of offences under Sections 307/354/323 RPC has been registered in police Station Thanamandi and investigation entrusted to ASI Mohd. Ashrif Bhatt. During the course of investigation, I/O along with Police Party visited place of occurrence at Plangerh. After inspecting the scene of crime, prepared the site plan of place of occurrence and also recorded the statements of witnesses under Section 161 Cr.P.C. Later on, the statement of victim lady namely Rabia Kouser D/o Manir Hussain

(complainant) caste Gujjar R/o Plangerh got recorded before Munsiff Judicial Magistrate Thanamandi under Section 164-A Cr.P.C. and certified copy of the statement recorded under Section 164-A Cr.P.C. obtained from Court concerned. Besides this, I/O seized the blood sustained cloth of victim lady i.e., daughter of complainant as evidence and prepaid seizure memo. The medical report of complainant as well as his daughter are required to be obtained from concerned medical authority. On the basis of statement made by victim girl of complainant under Section 164-A Cr.P.C. and statements of eye witnesses recorded under Section 161-A Cr.P.C, offences under Sections 307/323/354-B/RPC has been established against Khalid Tanveer S/o Munshi Khan and Munshi Khan S/o Gulla caste Gujjar R/o Plangerh Tehsil Thanamnandi. The search of the accused persons is going on, who are still absconding after commission of crime. The alleged accused persons are required to be arrested and weapon of offence is yet to be recovered.

5. I have considered the contentions of parties.

6. From the perusal of Annexure B annexed with the petition, it is evident that this court on 13.09.2018 already passed an order in earlier bail application No.142/2018 filed by petitioners on same grounds that they shall move an application in this regard before Sessions Judge concerned and granted 10 days bail for approaching before concerned Sessions Judge. Petitioners instead of filing such application before concerned court have again moved same application. No reasonable explanation has been given as to why they did not approach the said court.

7. From bare perusal of allegations, it is evident that petitioner No.2 on 06.09.2018 has outraged the modesty of one Rabia Kouser when she was grazing her cattle in her pasture land at Palangerh; he also attacked upon her head with an Axe with intention to kill her. On raising hue and cry, father of alleged victim came on spot and accused and his father namely Munshi Khan S/o Gulla beat both of them; FIR No.154/2018 for commission of offences under Sections 307/354/323 RPC came to be registered and statement of victim has also been recorded under section 164-A Cr.P.C, which establishes the prima facie offences as alleged against the petitioners. Offence under section 307 RPC is serious one and offence under section 354 RPC is also against women. Anticipatory bail cannot be granted in such offences. Further, petitioners have misrepresented the court, as they obtained ten days bail from this court on the pretext that they will file petition before Sessions Judge, but they did not file the same.

8. In view of above, this petition is dismissed. Let a copy of this order be sent to concerned police as well as to Sessions Court concerned for information.