

(2014) 06 SHI CK 0132
In the High Court Of Himachal Pradesh
Case No : Cr. M.P. (M) No. 620 of 2014

Pankaj Modi

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 04-06-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 439
Penal Code, 1860 (IPC) — Section 202, 302, 304, 34, 376

Citation : (2014) 06 SHI CK 0132

Hon'ble Judges : Tarlok Singh Chauhan, J

Bench : Single Bench

Advocate : R.K. Bawa, Senior Advocate, Mr. Onkar Jairath and Mr. Jeevesh Sharma, Advocate for the Appellant; Virender Kumar Verma, Ms. Meenakshi Sharma, Additional Advocate Generals and Ms. Parul Negi, Deputy Advocate General and A.S.I. Prem Lal, I/O, Police Station, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Tarlok Singh Chauhan, J.—The petitioner has approached this Court by filing application u/s 439 of the Code of Criminal Procedure for grant of bail in case FIR No. 35/2014 dated 21.02.2014, registered at Police Station, Dhalli, District Shimla, under Sections 302, 376, 202 read with Section 34 IPC. The statues report has been filed by the respondent-State.

2. The prosecution story as emerges is that on 21.2.2014, at about 12.05 a.m., Sh. Deep Ram Sharma, driver of Tanker bearing registration No. HR-37B-6499 reported to police station, Dhalli that when he was returning back from Bithal Rampur to Shimla, then at place Rain Shelter Sadhora, they found a lady in naked position, who was crying to save her. There was a car parked nearby in which three-four people were sitting. They did not stop out of fear. On this information, the investigation team rushed to the spot and found a dead body of a lady in a naked state. On the basis of rukka, FIR was registered. Investigating agency swung into action. There were tyre marks of vehicle found on the spot.

The post mortem examination of the dead body was conducted. The viscera, vaginal swab and smear were sent for chemical analysis to Forensic Laboratory Junga. The accused persons were arrested. It was revealed that accused persons had caused the death of lady, who was later on identified to be Chitra, by crushing her under the wheels of Maruti Alto bearing registration No. HP-01A-2723. All the other accused persons including petitioner were also arrested for the participation in crime of alleged offence. Hence, accused persons were booked for commission of offence of rape coupled with murder of deceased Chitra in furtherance of common intention and intentionally omitting to give any information in respect of that offence which they were legally bound to give.

3. It is argued by Shri Virender Kumar Verma, learned Additional Advocate General assisted by Ms. Meenakshi Sharma, learned Additional Advocate General and Ms. Parul Negi, learned Deputy Advocate General that petitioner is the main accused in this case and has committed not only a serious but a heinous offence. It is further argued that here was a case where a lady was crying for help, but was found murdered in cold-blood and most diabolic manner because she had died as a result of crush injury caused by the petitioner, who was the driver of the offending car. In the medical opinion obtained in this case, the cause of death of the victim was haemorrhage on account of shock and, as a result of which, multiple ante-mortem injuries suffered by the deceased. The duration of the injuries co-related with the time of the incident which clearly proved beyond reasonable doubt that it was the petitioner alone, who had murdered the deceased.

4. On the other hand, Shri R.K. Bawa, Senior Advocate, assisted by Shri Onkar Jairath and Shri Jeevesh Sharma, Advocates, would contend that all other co-accused in this case have already been released on bail and it is only the petitioner, who is in custody for no fault of his and there are no allegations against the petitioner which are different from those of the co-accused already released on bail.

5. I have given my deep and thoughtful consideration to the submissions made by rival parties and also gone through the status report and certain records of the prosecution produced before this Court as it is stated that the entire investigation file is with the competent court of jurisdiction. No doubt, this Court has released all other co-accused on bail, but the complicity and the role played by the petitioner cannot be equated with those of the co-accused already released on bail. Infact, in terms of the prosecution story, it is the petitioner, who is the principal accused and the overt act in this case is mainly attributed to the accused.

6. Shri R.K. Bawa, Senior Advocate, strenuously argued that taking the prosecution story at its best on its face value and assuming the same to be correct without conceding, even then, no case u/s 302 IPC is made out and at best though not again conceding, a case u/s 304 Part-II IPC would be made out against the petitioner.

7. The relevant grounds and considerations on which the bail can be granted are well settled and have been reiterated in a recent judgment of the Hon''ble Supreme Court in Y.S. Jagan Mohan Reddy Vs. Central Bureau of Investigation, which reads as under:-

35. While granting 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 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/State and other similar considerations.

8. Out of the several factors and considerations for grant of bail, one such factor is the nature and gravity of the accusation and the exact role of the accused. No doubt, the arrest should be the last option, but the same still has to be restricted to those exceptional cases like the present one where arrest and custody is imperative in the facts and circumstances of the case.

9. At this stage, it would not be appropriate for this Court to go into the question as to what provisions of law can be the petitioner charged with. Yes, this Court cannot be oblivious of the fact that a young lady in the prime of youth has been made to lose her life and, therefore, the question as to the applicability of Section 302 or 304 Part-II IPC, at this stage, becomes inconsequential taking into consideration that both the Sections provide for severity of punishment. u/s 302 IPC, the offence is punishable by death or imprisonment for life and fine while u/s 304 Part-II IPC, the offence is punishable with imprisonment for ten years or fine or both.

10. Therefore, looking into the gravity and seriousness of the offence for which the petitioner has been charged, I do not find it a fit case where the petitioner ought to be granted bail and accordingly the present petition is rejected.

11. Needless to say that the observations made hereinabove in no manner will be construed to be an opinion on the merits of the case and have been made solely for the purpose of deciding the present bail application. Since the competent Court of jurisdiction is already seized of the matter, this order will not come in the way of the petitioner in the event of petitioner filing a petition for bail before the competent Court which if preferred shall be strictly decided in accordance with law without being influenced by what has been observed in this order and decide the same in accordance with law.