
(2009) 05 RAJ CK 0055
In the Rajasthan High Court

Rahul Gupta and Others

APPELLANT

Vs

The State of Rajasthan

RESPONDENT

Date of Decision : 06-05-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 438
Penal Code, 1860 (IPC) — Section 498A

Citation : (2010) 1 DMC 123 : (2009) 4 RLW 2967

Hon'ble Judges : Raghuvendra S. Rathore, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Raghuvendra S. Rathore, J.—On apprehension of their arrest, the petitioners have come to this Court for seeking pre-arrest bail by filing this application u/s 438 Cr.P.C. The matter relates to a matrimonial dispute between the members of Indian Civil Services. The petitioner No. 1 is a member of Indian Civil Services of 2004 batch. Likewise the complainant is a member of 2005 batch. An introduction between the parties during the earlier period of training had seen the friendship blossom, which culminated into solemnization of marriage between the two on 17.09.2005, in accordance to Arya Samaj rits. The friendship between the parties, which had led to a tie of marriage within a short span of time, showed breaking of the same in an equally short period when a divorce petition came to be filed by the petitioner in the month of September, 2008 and the instant First Information Report came to be filed by the other side, simultaneously on 24.09.2008.

2. A brief reference to the factual position of the case is that an FIR came to be lodged by the informant Smt. Shalini Agarwal, at Mahila Thana, Jaipur City (South) on 24.09.2008 for the offence under Sections 498-A and 406 IPC. Crux of the allegation, made in the report, is that the informant had met with cruelty at the hands of the petitioners and that her dowry articles are with them. A list of articles was also annexed alongwith the First Information Report, which shows

the articles given to the petitioners and also the one given to the informant by the parents of the petitioner. When the friendship of the parties had reached to its heights, that they got married on 17.09.2005, at Arya Samaj, Jaipur. Later on, a formal Sagai ceremony, according to Hindu rites, had taken place on 13.11.2005 at Jai Mahal Palace Hotel, Jaipur and marriage took place on 13.02.2006, in presence of the parents and relatives, at Ahmedabad. The petitioner No. 1, who is a member of Indian Civil Services of 2004 batch, had been allotted Gujarat Cadre. The informant, who is a member of Indian Civil Services of 2005 batch had been allotted Jammu & Kashmir cadre. Later on, the cadre of the informant had been changed from State of Jammu & Kashmir to that of State of Gujarat, on 10.02.2006. The differences between the parties had arose around the period of September, 2008. Ultimately, the relations between the parties had broken, so much so, that the informant started living separately and had carried away the dowry articles from residence at Gujarat as well as from the Bank lockers.

3. After lodging of the report, the petitioners under apprehension of arrest, moved an application for anticipatory bail in High Court of Gujarat. An interim bail was granted to the petitioners on 19.12.2008 for the period upto 30.12.2008. Thereafter, the petitioners moved an application before the District Judge, Jaipur, which came to be dismissed by the impugned order dated 07.01.2009. Hence, this bail application has come to be filed.

4. Looking to the facts and circumstances of the case, the High Court, vide its order dated 28.01.2009, issued directions to the petitioners to present themselves before the Investigation Officer on 05.02.2009 and thereafter to co-operate in the Investigation as per his instructions. An attempt was also made, later on, for exploring the possibility of amicable settlement between the parties but the same did not yield any result.

5. The learned Counsel for the petitioners has submitted that a false report has been lodged against the petitioners only with the object to harass them. In fact, he has submitted that the instant report was lodged with an oblique motive so as to get rid of the proceedings of divorce, which were initiated by the petitioner No. 1 against the informant before the Civil Judge (Senior Division), Gandhi Nagar, Gujarat. It is further submitted that the allegations made in the report are totally concocted and the factual position is otherwise. According to him, the petitioners did not cause any harassment to the informant and in fact, she had disturbed peaceful matrimonial life because of her arrogant behaviour. He has also submitted that the informant had taken away all the articles from the residence in Gujarat and also from the locker of the bank which was being regularly operated by her. He has also drawn the attention of this Court to the affidavits of Ravi Kumar Arora and Kishan Shah for substantiating the factual aspect of the case.

6. In response, the learned Public Prosecutor as well as the learned Counsel for the informant have seriously opposed the submissions made by the counsel for

the petitioners. It had been submitted that it was the petitioners, who had been harassing the informant and committing cruelty on her. According to them, the petitioners were demanding dowry and whatever articles were given by the parents of the informant are still in their possession. The counsel for the informant has further submitted that so far as the articles in the locker of the bank are concerned, were only some important documents which had been taken away by her. He has also submitted that the affidavits filed by the two officers do not give a correct version as both of them were, at different time, working in subordination of petitioner No. 1.

7. I have given my anxious and thoughtful consideration to the submissions made by the counsel for the rival parties. The Hon'ble Supreme Court, since the case of Shri Gurbaksh Singh Sibbia and Others Vs. State of Punjab, has time and again laid down that the powers u/s 438 Cr.P.C. are extraordinary in nature. It has also been laid down that the said powers could be exercised when it is found that a person has been falsely implicated or a frivolous case is launched against him or there is a reasonable ground for holding that a person accused of an offence is not likely to abscond, or otherwise misuse liberty while on bail. The object behind the bail u/s 438 Cr.P.C. has been lately reiterated in the case of Som Mittal Vs. Govt. of Karnataka, of the said judgment, the Hon'ble Supreme Court has held as under:

52. Thus the provision for anticipatory bail was introduced in the Code of Criminal Procedure because it was realised by Parliament in its wisdom that false and frivolous cases are often filed against some persons and such persons have to go to jail because even if the first information report is false and frivolous a person has to obtain bail, and for that he has to first surrender before the learned Magistrate, and his bail application is heard only after several days (usually a week or two) after giving notice to the State. During this period the applicant has to go to jail. Hence even if such person subsequently obtains bail his reputation may be irreparably tarnished, as held by the Supreme Court in Joginder Kumar Vs. State of U.P. and others, The reputation of a person is a valuable asset for him just as in law the goodwill of a firm is an intangible asset. In the Gita Lord Krishna said to Arjun:

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For a self-respecting man, death is preferable to dishonour. (The Gita, Chapter 2, Shloka 34)

8. Taking into consideration the principles of law for exercising powers u/s 438 Cr.P.C. and the facts and circumstances of the present case, revealed from the material on record, but without expressing any opinion on the merits, I am of the considered view that it would be just and proper to grant indulgence of pre-arrest bail to the petitioners u/s 438 Cr.P.C. Accordingly, the bail application is allowed. The S.H.O./I.O./Arresting Authority, Police Station Mahila Thana, Jaipur City (South) in F.I.R. No. 92/2008 is directed that in the event of arrest of the

petitioners (1) Rahul Gupta S/o Shri Babu Lal Gupta; (2) Babu Lal Gupta S/o Shri Ramjilal Gupta and (3) Smt. Krishna Gupta wife of Shri Babu Lal Gupta, they shall be released on bail, provided each of them furnishes a personal bond in the sum of Rs. 50,000/- with two sureties in the sum of Rs. 25,000/- each to his satisfaction on the following conditions:

- (i). that the petitioners shall make themselves available for interrogation by a police officer as and when required;
- (ii). that the petitioners shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or any police officer, and
- (iii). that the petitioners shall not leave India without previous permission of the court.