
(1998) 02 RAJ CK 0054

In the Rajasthan High Court

Case No : Criminal Miscellaneous Bail Petns. No's. 145 and 146 of 1998 and Cri. Miscellaneous Cancellation of Bail Petns. No's. 55 of 1997 and 3 of 1998

Rajan Bhanot and

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 27-02-1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 439(2)
Penal Code, 1860 (IPC) — Section 304B, 498A

Citation : (1998) CriLJ 1928

Hon'ble Judges : A.S. Godara, J

Bench : Single Bench

Advocate : H.M. Saraswat and N.K. Bohra, for the Appellant; S.K. Vyas, Public Prosecutor, for the Respondent

Judgement

A.S. Godara, J.—Since all these petitions arise out of F.I.R. No. 506/97 registered at and pending investigation with the Police Station, Chopasani Housing Board, Jodhpur and, therefore, they are being disposed of by this common order.

2. For disposal of these petitions briefly stated the facts of the case are that Abdul Shakoor first informant who lodged written report at the said Police Station on 5-12-97 at 4.15 p.m. alleged that his daughter Nisha (since deceased) aged 21 -22 years was in love with Subhash son of the accused-petitioner Krishna Kumar, and in the mid of 1997, Subhash and Smt. Nisha celebrated their marriage before Arya Samaj, Ajmer and, subsequently, since Smt. Nisha, on her examination by the Addl. Chief Judicial Magistrate No. 3, Jodhpur, expressed her willingness to live with her husband Subhash and so the parties of Smt. Nisha were reconciled to inter religious marriage of Smt. Nisha with Subhash and hence Smt. Nisha started living with her husband Subhash who is living with his father Krishna Kumar and mother Smt. Kamala. The accused-petitioner Ranjan Bhanot is elder brother of Subhash and the accused-non-petitioner Smt. Chetana is his wife who were residing in the immediate neighbourhood of Abdul Shakoor

in the Chopasani Housing Board Colony whereas Krishna Kurnar along with Smt. Kamala and Subhash was residing in Kudi Bhagtasani Housing Board Colony in House No. 18/771.

3. It is alleged that the parents as well as brother and sister-in-law of Subhash were not reconciled to this marriage and, when love affair of Subhash and Nisha lastly culminated into a celebrated marriage, though Smt. Nisha started living with her husband living with his parents but the accused-petitioner Rajan and his wife always instigated parents of Subhash and, consequently, all of them started harassing, taunting and meeting out inhuman and cruel treatment always on the ground that she should prevail upon her parents to give dowry at least to the extent to the value of Rs. 70,000/- and since, as expected, she had married with Subhash much against their wishes and she had come with empty handed without any dowry etc. and so she had been at times kept hungry and also subjected to physical and mental tortures and, lastly, when the developments went out of tolerance. Smt. Nisha lodged a report for offences u/s 498A, I.P.C. on 7-4-97 at the Police Station, Jodhpur and, consequently, F.I.R. No. 266/97 u/s 498A was registered in which Subhash was also arrested and subsequently bailed out and this further aggravated the adverse circumstances and, lastly, Smt. Nisha was forced to have taken shelter at the residence of Sorted Ram, an acquaint and intimate of Abdul Shakoor and so Smt. Nisha was again taken to the house of her parents. Lastly, it was on 5-12-97 itself that at about in the afternoon, Smt. Nisha committed suicide by hanging from a fan-hook fixed in the ceiling resulting in her asphyxial death.

4. On the report so lodged by Abdul Shakoor, this F.I.R. u/s 304B and 498A, I.P.C. has been registered and presently pending investigation.

5. The dead body of Smt. Nisha was subjected to an inquest report and finally it was examined by a Medical Board and asphyxia death of the deceased has been confirmed and, presently, it is not disputed that this is not a natural death and instead it was an unnatural death resulting from hanging.

6. During the course of investigation, besides, Subhash, his brother Rajan, Rajan's wife Smt. Chetana, Krishna Kumar and Smt. Kamala who are parents of Rajan and Subhash were arrested.

7. Smt. Kamala is reported to be ailing and, consequently, she is lodged in the hospital under police custody and was reported to be under treatment. However, rest of the said accused-persons moved different bail applications before the lower Court and, lastly, so far as Rajan and Krishna Kumar are concerned, their applications for grant of bail were rejected by the learned Sessions Judge vide his orders dated 18-12-97 and 9-1 -98 respectively and hence these petitions Nos. 145/98 and 146/98 for bail.

8. As regards Smt. Chetana and Subhash, their applications for bail were accepted by the learned Sessions Judge vide his orders dated 10-12-97 and 9-1-98 respectively and hence, aggrieved by the same, the first informant has

moved these Petitions Nos. 55/97 and 3/98 for cancellation of their bail.

9. The accused-non-petitioners have filed reply to the petition in petition No. 3/98 on the grounds common to both the petitions for cancellation of the bail refuting all the allegations.

10. I have heard the learned counsel for the parties as well as the learned P.P. and have also considered their rival contentions in favor and in opposition of the petitions so moved.

11. As regards petitions Nos. 145/98 and 146798, presently, for the disposal of these petitions it need hardly be repeated that Smt. Nisha is claimed to be daughter of Abdul Shakoor and his wife Smt. Tipu though their relationship is being disputed from the side of the accused-persons on the ground that Smt. Tipu was earlier married to some other person professing Hindu religion and, subsequently, (sic) fell apart from her former husband and instead she started living with the first informant Abdul Shakoor and Smt. Nisha was born to Smt. Tipu while her marriage was subsisting with her former husband but for the disposal of these petitions, it is hardly of any avail to the accused-persons.

12. Besides, from the statements of Abdul Shakoor, Smt. Tipu as well as Bhoma Ram and as also borne out from the F.I.R. lodged without any delay as well as inquest report, site memo appended with the site plan as well as the findings of the post-mortem conducted on the dead body of Smt. Nisha by a Medical Board, asphyxial death of Smt. Nisha cannot be denied. She died unnatural death well within a year from the date of celebration of her special marriage with the accused Subhash. Inter se relationship of the accused-persons, as detailed hereinbefore, need not be repeated. Besides, this is also undeniable that Rajan and his wife Smt. Chetana are living in a house allotted by the Chopasani Housing Board situated just adjacent to that of the first informant Abdul Shakoor and they are immediate neighbours Smt. Nisha was in love with Subhash for quite some time and both were bent upon marrying with each other and, lastly, the relations of both the parties including their parents had to submit to the wishes of Subhash and Smt. Nisha resulting in confirmation and approval of their marriage outwardly but, any how, it appears that about four or five months Smt. Nisha could hardly live with her husband as well as in-laws and, during this period, as she had reported to her parents who also testified to this fact and is also borne out of the present F.I.R. and the earlier F.I.R. No. 266/97 and so also number of letters reported to have been written by the deceased herself, speaking about the trauma, agony, mental as well as physical discomfiture and cruelty, Smt. Nisha was forced to suffer and undergo, at present, there cannot be any difficulty to prima facie conclude that the deceased was subjected to extreme mental and physical cruelty before she was forced to leave house of her in-laws and to reside at the residence of Abdul Shakoor himself till her end.

13. As regards the accused-petitioners Rajan and Krishna Kumar, while relying on the decision rendered in *Mishriya v. State of Rajasthan* 1995 Cri LR (Raj) 542

pointing out towards the ingredients constituting offence u/s 304B, I.P.C., submitted that the evidence so collected in the form of certain letters purported to have been written by the deceased herself and found in certain pages of the diary seized from the house of the first informant have been prompted and forced at the instance of the first informant and his family members to falsely implicate the accused persons to teach" them a lesson since the first informant and so also his wife and their relations never got reconciled to the marriage of Smt. Nisha with Subhash and hence there was every motive for the first informant and his relations to have either forced or killed Smt. Nisha to book the accused-persons and, hence, the accused Subhash who is husband of the deceased, also lodged a complaint against the parents of the deceased before the Court of Addl. Chief Judicial Magistrate No. 2, Jodhpur. Besides, his submission is that once these so called letters are taken out of consideration there is no evidence of torture or harassment upon before the death and prior to the death of the deceased and hence no offence u/s 304B, I.P.C. is made out and even if there is suspicion against any of the accused-persons seeking bail, at present, looking to the nature of the controversy and the antecedent conduct and the development preceding death of Smt. Nisha lead to the only conclusion that the allegations of either physical or mental torture for forcing or romping demand of dowry is nothing but a sheer concoction and specially when Smt, Chetana as well as Subhash who is husband of the deceased have been bailed out by the learned Sessions Judge and, as is his submission, rightly too, since Rajan, admittedly, lived in the immediate neighborhood of the first informant about a distance of 12 kms. from the residence whereat Rajan's parents and his younger brother Subhash are living and the deceased also during the relevant period lived with Subhash and not at the residence of Rajan. Therefore, Rajan and Smt. Chetana had had no occasion or any rhyme or reason to have harassed and meted out cruel treatment to the deceased and all these allegations are false.

14. Similarly, relying on the decisions rendered in *Dolat Ram v. State of Haryana* 1995 SCC (Cri) 237, he has further submitted that since Rajan and his wife so lived separately and it furnishes an additional ground for Rajan also to be granted bail giving him a treatment similar to his wife Smt. Chetana already granted bail by the lower Court.

15. However, the learned counsel for the informant petitioner Abdul Shakoor as well as the learned P.P. on behalf of the State relying on the decisions rendered in *Jagram v. Ghamandi Chander* 1980 Raj Cri C 364; *Mulakh Raj v. State of Punjab* 1998 (1) RCC (Criminal) 43 ; *Vishaka and others Vs. State of Rajasthan and Others*, ; *The State of Maharashtra v. Ramesh Taurani* 1998 (1) RCR (Criminal) 227 : 1998 AIR SCW 181 and *Gurcharan Singh and Others Vs. State (Delhi Administration)*, while seriously opposing the bail petition of the accused-petitioners and, at the same time, supporting their applications for cancellation of bail of these two accused-non-petitioners already granted bail by the learned Sessions Judge, submitted that looking to the gravity of the allegations and consequential offences committed and the evidence, direct as well as

circumstantial, having so far been collected and the investigation being at its crucial stage, since the first informant on the basis of his own as well as that of his wife's affidavit has prima facie shown that Smt. Chelana wife of Rajan and so also the accused Subhash, after being freed on bail, are threatening the petitioner Abdul Shakoor and his family members with dire consequences and they are misusing their right of being on bail, and, besides, the investigation is being withheld by them and, therefore, while the investigation is as yet to be taken to its logical conclusion and there are strong grounds to believe that Smt. Nisha was led to end her life as a result of conduct of the accused-persons full of harassment and cruelty motivated by the greed of dowry which forced Smt. Nisha to end her life just after a few months of her marriage and hence the accused-non-petitioner Smt. Chetana as well as Subhash were not entitled to grant of bail and so their orders of bail are unjust resulting in great injustice and prejudice to the complainant party and the investigation has been adversely affected and it is, in all probabilities, likely to cause injustice to the complainant-party and, therefore, the petitions for bail moved on behalf of the accused-petitioners Rajan Bhanot and Krishna Kumar who are real brother and father of the accused Subhash respectively did not merit acceptance and instead the petitions moved by Abdul Shakoor for cancellation of bail of two accused-petitioners Subhash and Smt. Chetana deserve to be accepted, and the orders of granting bail to these accused-petitioners deserve to be set aside in the interest of justice.

16. On giving a consideration though to the aforesaid circumstances, as already concluded hereinbefore, all the facts and circumstances preceding and anterior to the death of Smt. Nisha speak a volume about the facts and circumstances besides the gravity of the offences committed. There are statements of the parents of the deceased and so also Bhoma Ram and, besides, there is a suicidal note recovered by the Investigating Officer from the place of occurrence which speaks in corroboration of allegations of the F.I.R. and also the statements of the parents of the deceased. Besides, an engagement diary of the year 1995 has been seized from the possession of Smt. Tipu, mother of the deceased and, in the writings existing on pages 75-76, 81, 82, 83, 85 and 86, all addressed in the name of the learned Magistrate, the deceased has repeatedly mentioned and expressed her trauma, cruelties and the agonies she had to suffer at the hands of her in-laws as well as Rajan accused-petitioner as well as his wife Smt. Chetana and, lastly, her suicidal note, at present, as submitted by the learned counsel there being nothing to suspect the authenticity and genuineness of these letters to have been scribed by and in the hand of the deceased herself, there is a strong prima facie case to show that all these accused-persons, presently, before this Court, either as petitioners or non-petitioners, never reconciled themselves to the marriage of Subhash with the deceased Smt. Nisha and, therefore, Rajan who is elder brother of Subhash as well as his wife Smt. Chetana often visited the house of their parents whereat the deceased, for few months, lived as wife of Subhash and they often instigated and provoked parents

of Subhash as well as they harassed and taunted and even, at times, physically assaulted the deceased who is alleged to have died while wailing and under pain suffered at the hands of the accused-petitioner and their abettors.

17. Therefore, at present, so far as the bail petitions of Krishna Kumar and Rajan who are father and elder brother of Subhash, they are directly accused of meeting out a cruel treatment to the deceased to force her to obtain/grab dowry in the form of cash and valuables from her parents and, lastly, her life was made so miserable that she was forced to have left house of her inlaws and husband even after she had become pregnant from Subhash and she was also being forced to abort her child and this was further an aggravating factor to have forced the deceased to have ended her life since she left every hope of either reconciliation or happiness either with or without the accused-persons.

18. In view of these circumstances, since Subhash has also, while being on bail, lodged a complaint alleging commission of murder of his wife Smt. Nisha at the hands of her parents etc. and it also" shows that the case is still heading towards-its worse and the accused-petitioners are leaving not chance to frustrate the fair and impartial investigation. Merely because Rajan, being the elder son of Krishna Kumar, is living separately, that by itself cannot be a ground to release him on bail.

19. Consequently, on cumulative consideration of the facts and circumstances resulting from the evidence collected so far, since the parties belonged to different religious and the matter acquires additional seriousness and gravity and, in the result, so far as the bail petitions of accused-petitioners Krishan Kumar and Rajan are concerned, there is no ground, at present, to believe that the allegations of their alleged commission of the offences under Sections 304B and 498A, I.P.C. are groundless and, in the result, there is no other mitigating circumstances to grant bail to both these petitioners and hence their bail petitions are dismissed.

20. However, as regards the petitions moved for cancellation of the bail of the accused-petitioners. Smt. Chetana and Subhash, though, presently, it cannot be denied that they are also involved in commission of the alleged offences but, as also held in Gurcharan Singh and Others Vs. State (Delhi Administration), by the Hon"ble Supreme Court the considerations that weigh for cancellation of bail u/s 439(2) are different from those which weigh for grant of bail and, hence, so far as the present case is concerned, the learned Sessions Judge has granted bail to the wife of Rajan Bhanot whose application for bail is. presently, also being refused and, besides, being a lady, she did not stand to benefit directly from demand of dowry and, at present, it is too premature to sustain allegations from the side of the first informant petitioner that both these accused-persons were misusing right of being on bail and they were threatening the informant and his family to desist from prosecuting the case against them and, as a result, since the parties have virtually are at daggers-drawn, there is every justification for exercising restraint in canceling bail of Smt. Chetna as well as Subhash who has

not been directly accused of meting out cruel treatment to the deceased to obtain any dowry and, instead, at the most, lastly, he has, been accused of having succumbed to the pressure of his co-accused persons and to have deserted the deceased with whom he was earlier in love and prompted and motivated her to undergo a marriage with him and, consequently, since, for last about 2 months the Investigating Officer also appears to be dormant and indifferent in investigation and, therefore, it is expected of the Investigating Officer that he must expedite the completion in an impartial and right direction without succumbing to the undue pressure from either side and, meanwhile, there are no compelling circumstances to cancel the bail granted to the accused-non-petitioners Smt. Chetana and Subhash expecting from them that they shall not interfere with or resort to any illegal or unwarranted conduct having any adverse bearing on the fair, impartial and correct investigation. Besides, the fate of the counter complaint lodged by Subhash is yet to be known.

21. In the aforesaid circumstances, till investigation of F.I.R. No. 506/97 is taken to its logical conclusion thereby bringing out guilt of each accused-person named in the F.I.R. or subsequently, as found out by the evidence so collected, it does not appear fully just and fair to cancel the bail granted to the accused-non-petitioners Smt. Chetana and Subhash and, hence, after taking into all the objections of these petitions into consideration, as reiterated by their learned counsel, for the present, both these petitions, for cancellation of bail, are dismissed with the hope that both these accused-persons shall not create any circumstances justifying cancellation of their bail.

22. Resultantly, all these four petitions are disposed of in the manner indicated hereinbefore.