

(2019) 05 DEL CK 0518

In the Delhi High Court

Case No : Criminal Miscellaneous Case No. 1048 Of 2019, Criminal
Miscellaneous Application No. 4205 Of 2019

Ritu Vashisth

APPELLANT

Vs

State (Nct Of Delhi) & Anr

RESPONDENT

Date of Decision : 09-05-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 173, 439(2), 482
Indian Penal Code, 1860 — Section 34, 120B, 186, 307, 323, 353, 354, 354B, 380,
406, 417, 419, 420, 468, 471, 498A, 506, 509
Indian Medical Council Act, 1956 — Section 15
Arms Act, 1959 — Section 25, 27

Citation : (2019) 2 JCC 1628

Hon'ble Judges : R.K.Gauba, J

Bench : Single Bench

Advocate : Tushar Sharma, Achal Kaushik, Saurabh Sharma, Kewal Singh Ahuja,
Krishan Arora, Sumit Jangra

Final Decision : Disposed Of

Judgement

R.K.Gauba, J

1. The second respondent is one of the several persons who have been summoned as accused pursuant to cognizance being taken on report (charge sheet) under section 173 of the Code of Criminal Procedure, 1973 (Cr.P.C.) submitted by the police upon conclusion of investigation into first information report (FIR) No.82/2018 of Police Station Moti Nagar statedly involving offences punishable under sections 417/419/420/468/471/380/354/354-B/509/120-B/498-A/406/34 of the Indian Penal Code, 1860 (IPC) and Section 15 of the Indian Medical Council Act, 1956, the petitioner herein being the first informant (complainant/victim), the former (the second respondent) having married the petitioner, some petitions seeking annulment of the said marriage, inter alia, on the ground of fraud being pending before the family court.

2. The second respondent (the accused) was arrested on 18.05.2018 in connection with another FIR No.172/2018 of Police Station Kirti Nagar, involving offences punishable under sections 186/353/307/323/506 IPC and sections 25 and 27 of the Arms Act. Thereafter, he was formally arrested in the present case, i.e., FIR No.82/2018. It appears he (the accused) was released on bail by the court of sessions in case FIR No.172/2018 by order dated 13.02.2019. He moved an application for bail (No.370/2019) in the context of present case, which was allowed by Additional Sessions Judge by order dated 16.02.2019.

3. The present petition was filed by the complainant of the case immediately after the above order invoking the jurisdiction of this court under Section 439(2) read with section 482 Cr.P.C., her prime contentions being that the previous criminal antecedents of the accused had been glossed over and trivialized while allowing release on bail of the accused by order dated 16.02.2019.

4. By order dated 25.02.2019, the operation of the impugned order releasing the second respondent on bail was stayed and a notice issued to him (the second respondent), requiring his presence by production warrant. He was produced from jail on 13.03.2019 and was also assisted by a counsel engaged by him. He was given opportunity to submit his response to the petition seeking cancellation of the bail order. The response was filed in due course. Later, need was felt for further up-dated status report to be called for. The State has submitted detailed report indicating the status of other criminal cases in which the involvement of the accused in some cases, allegedly having used different names or descriptions, is elaborated.

5. It may be mentioned here that the involvement of the accused in a series of crimes in the past was also brought to the notice of court of sessions when his bail application was being considered there. A mention of eight such cases has been made (in a tabulated form) at second and third pages of the impugned order. It is noted that the investigating agency/State was resisting release on bail, inter alia, on the ground that the second respondent is a habitual offender.

6. The Additional Sessions Judge (ASJ), by the impugned order, however, noted the operative part of the order dated 13.02.2019 in the context of FIR No.172/2018, wherein another ASJ while granting release on bail to the second respondent/accused in different case, had observed that he was taking a "lenient view" since final conclusion of the trial (of that case) was to take some time. In the context of opposition with reference to past criminal records, the ASJ sidelined the submissions by observing that "the present case is triable by Magistrate".

7. The impugned order refers to involvement of the accused only in eight cases. The status report dated 29.04.2019, instead, refers to suspected involvement of the accused in twenty five cases, mostly of cheating, forgery, or criminal breach of trust. It appears from the said status report that the case of the prosecution in a number of said cases anterior to the one at hand has been that the accused

has been using different identities at different stages allegedly to commit the offences in the above nature.

8. In the response which has been filed, the accused has generally pleaded ignorance about pendency of a number of cases which are being referred. It is also essential to note that as against details of twenty four criminal cases set out in the status report dated 16.04.2019, in his reply dated 26.04.2019, he (the accused) has restricted his response to only thirteen of them, the submissions respecting the remaining being vague.

9. After some hearing, the learned counsel for the accused fairly conceded that it is inherent condition of a bail order that the accused will not indulge in any crime during the currency of the release on bail. He also conceded that the allegations of previous involvements cannot be sidelined merely on the fact that such cases are triable by the court of Magistrate. He further conceded that the impugned order dated 16.02.2019 is perverse inasmuch as the issues concerning the previous involvements, if any, the effect of such cases on the conduct of the accused, particularly the allegations of abscondance in some of them, have not been considered.

10. With above submissions, the counsel for the accused, having taken instructions, submitted that he (the second respondent) wants to forfeit the benefit of the impugned order dated 16.02.2019 as passed by the ASJ on bail application (No.370/2019), he giving no objection to the same to be vacated and set aside, his request being that the said bail application may be dismissed as withdrawn. He also submitted that the second respondent may be granted liberty to file fresh bail application before the court of sessions, setting out his position clearly vis-à-vis the allegations concerning the previous cases and explaining his conduct in relation thereto.

11. The counsel for the petitioner (the complainant), and the Additional Public Prosecutor for the respondent/State, on being asked, leave the matter to the discretion of the court.

12. In view of the above, the impugned order dated 16.02.2019 passed by the ASJ on bail application (No.370/2019), directing the release of the second respondent on bail in case FIR No.82/2018 of Police Station Moti Nagar under sections 417/419/420/468/471/ 380/354/354-B/509/120-B/498-A/406/34 of the Indian Penal Code, 1860 (IPC) and Section 15 of the Indian Medical Council Act, 1956, is set aside. The said bail application moved before the court of sessions is dismissed as withdrawn.

13. Liberty is granted to be second respondent to approach the court of sessions by a fresh application for bail. Needless to add, given the above facts and circumstances, it will be appropriate that at the time of consideration of such fresh bail application as the second respondent intends to move, the complainant will also be heard in addition to the Public Prosecutor for the State.

14. With these directions, the petition and the application filed there with are disposed of.