

(2004) 12 MP CK 0050

In the Madhya Pradesh High Court

Case No : Miscellaneous Cr. Case No. 4638 of 2004

Surbhi Chhabra

APPELLANT

Vs

Amar Chhabra and Others

RESPONDENT

Date of Decision : 15-12-2004

Acts Referred:

Arms Act, 1959 — Section 25, 3

Criminal Procedure Code, 1973 (CrPC) — Section 436, 437, 437(1), 437(2), 437(3)

Dowry Prohibition Act, 1961 — Section 3, 4

Penal Code, 1860 (IPC) — Section 120B, 147, 148, 149, 295A

Citation : (2005) 2 DMC 421 : (2005) 1 MPLJ 20

Hon'ble Judges : S.L. Kochar, J

Bench : Single Bench

Advocate : Sachin Verma, for the Appellant; A. Upadhyaya, Dy. G.A., for the Respondent

Final Decision : Dismissed

Judgement

S.L. Kochar, J.

This is an application for cancellation of bail granted to non-applicant No. 1, u/s 439(2) of the Code of Criminal Procedure.

In brief, the prosecution case is that the non-applicant No. 1 Amar Chhabra was married with the applicant Smt. Surbhi Chhabra on 20.1.2003. The applicant lodged a complaint before the Mahila Police Station, Indore and on the basis of the said complaint First Information Report No. 105/04 has been registered for the offence punishable under Sections 498A and 506, Indian Penal Code. The non-applicant was arrested by the Mahila Police and, thereafter, produced him before the learned Judicial Magistrate, First Class, Indore on 1.10.2004. The non-applicant No. 1 filed an application for grant of regular bail u/s 437 of the Code of Criminal Procedure. Along with the application, he had also filed a medical certificate of his father Arvind Chhabra which was disclosing that he was advised for taking rest. After hearing the parties and perusing the case diary, the learned

Magistrate granted bail to the non-applicant No. 1 subject to his furnishing a personal bond in a sum of Rs. 30,000/- with one surety in the like sum. The learned Magistrate while granting bail, has considered the fact of grant of anticipatory bail to all other co-accused persons named Rama Chhabra and Ashima Chhabra. The learned Magistrate mentioned in the order that the case of the applicant is not distinguishable from the case of the two other co-accused persons who were released on anticipatory bail. It has also been considered by the learned Magistrate that no objection was present in the record filed by the complainant/applicant. He has also considered that the offences are not punishable with death sentence or imprisonment for life and the trial will take its own time for its final disposal. On these grounds, the bail application was allowed by the learned Magistrate.

The contention of the learned Counsel for the applicant is that the learned Magistrate has not assigned any reason while granting bail. On going through the impugned order dated 1.10.2004, this Court does not find support to the contention of the learned Counsel for the applicant. The learned Magistrate has assigned reasons as mentioned above while granting bail.

The second submission advanced by the learned Counsel for the applicant is that now the Mahila Police Station has also added Sections 3/4 of Dowry Prohibition Act and, thus, prayed for cancellation of bail of the non-applicant on 13.10.2004. The applicant also prayed for cancellation of bail of non-applicant on 20.10.2004. The learned Counsel is misconceived on this point. When the applicant was arrested and produced before the learned Magistrate, the only offences registered were under Sections 498A and 506 of the Indian Penal Code. The offence under Sections 3/4 of the Dowry Prohibition Act was not registered at that time and uptil now, the police has not filed the charge-sheet. When the charge-sheet would be filed, then the occasion would come for the non-applicant No. 1 and other co-accused persons to file application for grant of bail for the offence under Sections 3/4 of the Dowry Prohibition Act and at that time, the Court would consider their prayer.

The next contention of the learned Counsel for the applicant is that after releasing the non-applicant No. 1 on bail on 1.10.2004 he and his friends named Ashima Chhabra delivered threats on telephone. On these grounds, the applicant had filed an application for cancellation of bail before the learned Magistrate and the same was considered vide order dated 25.10.2004. The learned Magistrate has passed the detailed order and held that the case diary and the application of non-applicant No. 1 are disclosing contradictory facts about delivery of threats by the non-applicant No. 1. The bail was granted to the non-applicant No. 1 on 1.10.2004 and on 13.10.2004 Mahila Police Station filed an application for cancellation of his bail. It was also alleged that the non-applicant No. 1 was not co-operating in the investigation. On 1.10.2004, when the complaint was filed at Tukoganj Police Station and in that complaint, it is stated that Ashmit Chhabra made a call and when the complainant/applicant herself has filed an application

on 20.10.2004 in that application, it is alleged that the accused persons reached at their house and thereafter on telephone abused her. The learned Trial Magistrate found three contradictory allegations regarding delivery of threats by the accused persons, therefore, he did not allow the application for cancellation of bail.

Learned Counsel for the applicant has also submitted a bunch of photocopies of the judgments rendered by the Apex Court in support of his contention which are as follows:

(i) *Puran Vs. Rambilas and Another etc. etc.,* .

This judgment is not helpful to the applicant because in this case, the offences were registered under Sections 498A and 304B, Indian Penal Code. The wife met an unnatural death within seven years of her marriage and it is a case of dowry death. It was triable by the Court of Session and the statute is prescribing life imprisonment. In this very judgment, the Supreme Court has considered in para 8 that giving reasons is different from discussing the merits or demerits. At the stage of granting bail a detailed examination of evidence and elaborate documentation on the merits of the case has not to be undertaken. The Supreme Court has considered the earlier judgment rendered in the case of *Niranjan Singh and Another Vs. Prabhakar Rajaram Kharote and Others,* . The Supreme Court has distinguished between assigning reason for grant of bail and discussing the merits or demerits of the case and deprecated the practice of elaborate discussion of the evidence while granting or refusing the bail. In the case in hand, the learned Magistrate has already assigned the reasons and this is precisely the requirement while passing the order of bail either granting or refusing it.

(ii) The next judgment cited is *Ram Govind Upadhyay Vs. Sudarshan Singh and Others,* .

In this case, the offence was registered u/s 302, Indian Penal Code against the accused persons, and against them another case was also registered for threatening the witnesses. The accused persons were granted bail, but even after filing of the charge-sheet, they did not appear before the Magistrate till he issued bailable warrants against them. In this situation, the Supreme Court has considered that the High Court erred in granting bail. This is not the situation and facts available in the present case.

(iii) In the judgment relied on by the learned Counsel for the applicant in the case of *Mansab Ali Vs. Irsan and Another,* , the accused persons were prosecuted under Sections 302 307 323 read with 147, 148 and 149, I.P.C. and the High Court granted bail without indicating any reason. Under these circumstances, the Supreme Court has cancelled the bail. This judgment is also not applicable in the facts and circumstances of the case.

(iv) The next judgment relied on is *Mandata Singh Vs. State of Rajasthan and*

Another, . In this case, the offence was registered under Sections 307 and 120B, Indian Penal Code and Sections 3/25, Arms Act and the accused persons were granted bail on 30.5.2002. After their release, number of criminal cases were registered against the accused persons on various different dates for the offences under Sections 399, 402 and 120B, Indian Penal Code and under Sections 3/25, Arms Act, and again under Sections 387 and 506, Indian Penal Code and under Sections 3/25, Arms Act. Offences were also registered against the accused persons under Sections 341, 323, 308 and 120B, Indian Penal Code subsequent to the release of the accused persons. All the subsequent offences were registered against the accused persons during the pendency of the trial in which, they were granted bail. Therefore, the Supreme Court has cancelled the bail on the ground that after releasing on bail, the accused persons have misused the liberty so granted to them by repeatedly indulging themselves in criminal activities.

(v) The last judgment relied upon by the learned Counsel for the applicant in Mehboob Dawood Shaikh Vs. State of Maharashtra, . This is a case of communal rioting and the accused persons were facing prosecution for the offences punishable under Sections 302, 307, 147, 148, 149, 295A, 427 and 435 of the Indian Penal Code. The concerned Police Inspector had filed an affidavit in support of application for cancellation of bail and that affidavit was not controverted by the accused persons. The High Court cancelled the bail and the Supreme Court also maintained that order. This is also the case which stands on altogether different footing on facts as well as on law.

In the present case the non-applicant No. 1 is not a habitual offender. While granting bail, the learned Magistrate assigned reasons that other two accused persons were granted anticipatory bail and the case of the non-applicant No. 1 is similar to the cases of those released co-accused persons. The learned Magistrate has also considered that the offences are not punishable with death sentence or imprisonment for life and the trial would make its own time for its conclusion. Just after three days the Mahila Police Station had filed an application on 13.10.2004 and the complainant also filed an application for cancellation of bail of non-applicant No. 1 on 20.10.2004 who is the husband of the complainant. Learned Magistrate considered both the applications by order dated 25.10.2004. In the order, the learned Magistrate has assigned detailed reason for rejection of both the applications. This order was passed after hearing all parties and on perusal of the case diary. The learned Magistrate found contradictory allegations levelled against the non-applicant No. 1 by the complainant and the witnesses.

Before parting with the case, this Court would like to refer the key judgment rendered by the Supreme Court on principal of granting and cancellation of bail, in the case of Gurcharan Singh and Ors. v. State (Delhi Administration,) AIR 1978 SC 178. Para 18, which reads as under:

"Chapter XXXIII of the New Code contains provisions in respect of bail and

bonds. Section 436, Cr.P.C. with which this chapter opens makes an invariable rule for bail in case of bailable offences subject to the specified exception under Sub-section (2) of that section. Section 437, Cr.P.C. provides as to when bail may be taken in case of non-bailable offences. Sub-section (1) of Section 437, Cr.P.C. makes a dichotomy in dealing with non-bailable offences. The first category relates to offences punishable with death imprisonment for life and the rest are all other non-bailable offences. With regard to the first category, Section 437(1), Cr.P.C. imposes a bar to grant of bail by the Court or the other officer in-charge of a police station to a person accused of or suspected of the Commission of an offence punishable with death or imprisonment for life. If there appears reasonable grounds for believing that he has been so guilty. Naturally, therefore, at the stage of investigation unless there are some materials to justify an officer or the Court to believe that there are no reasonable grounds for believing that the person accused of or suspected of the commission of such an offence has been guilty of the same, there is a ban imposed u/s 437(1), Cr.P.C. against granting of bail. On the other hand, if to either the officer-in-charge of the police station or to the Court there appear to be reasonable grounds to believe that the accused has been guilty of such an offence there will be no question of the Court or the officer in charge granting bail to him. In all other non-bailable cases judicial discretion will always be exercised by the Court in favour of granting bail subject to Sub-section (3) of Section 437, Cr.P.C. with regard to imposition of condition, if necessary. Under Sub-section (4) of Section 437, Cr.P.C. an officer or a Court releasing any person on bail under Sub-section (1) or Sub-section (2) of that section is required to record in writing his or its reasons for so doing. That is to say, law requires that non-bailable offences punishable with death or imprisonment for life, reasons have to be recorded for releasing a person on bail clearly disclosing how discretion has been exercised in that behalf."

(Emphasis supplied)

In the case in hand, the bail was granted after arrest of the accused and the offences are punishable under Sections 498A and 506, Indian Penal Code. Both these sections are triable by Magistrate, First Class and also are not punishable with death or imprisonment for life. The accused cannot be detained in the judicial custody for an indefinite period. We all know the time which the case will take for final disposal. The offence was registered on 23.9.2004. Uptil now the Mahila Police Station, Indore has not been able to file the charge-sheet. This Court is unable to understand for this offence as to why a long time is consumed by the police in investigation and filing of the charge-sheet.

In the case of the Haryana Financial Corporation and Another Vs. Jagdamba Oil Mills and Another, ., observed that:

"Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper."

In view of the above factual and legal discussion, no case is made out for admitting this petition. It is, therefore, dismissed.