

(2021) 02 JH CK 0001

In the Jharkhand High Court

Case No : Criminal Miscellaneous Petition No. 3880 Of 2019

Tara Shahdeo

APPELLANT

Vs

Union of India And Ors

RESPONDENT

Date of Decision : 01-02-2021

Acts Referred:

Indian Penal Code, 1860 — Section 120B, 298, 323, 354A, 376, 496, 498A, 506
Hindu Marriage Act, 1955 — Section 12, 12(I)(c)
Code Of Criminal Procedure, 1973 — Section 436, 436A

Citation : (2021) 02 JH CK 0001

Hon'ble Judges : H.C. Mishra, J

Bench : Single Bench

Advocate : Ajit Kumar, Aprajita Bhardhwaj, Pankaj Kumar, Rajiv Sinha

Final Decision : Dismissed

Judgement

1. Heard learned senior counsels for the petitioner, for the Union of India, as also for the opposite party No.2.

2. This application has been filed with a prayer for cancellation of bail granted to the opposite party No.2, by order dated 12.10.2019, passed in B.A.

No.5667 of 2019.

3. The opposite party No.2, has been made accused and facing trial for the offences under Section 120-B, read with Sections 496, 376, 323, 298, 354-

A, 506 and 498-A of the Indian Penal Code, in S.T No.554 of 2017 in the Court of the learned Additional Judicial Commissioner-III- cum-Special

Judge, C.B.I., Ranchi, arising out of R.C Case No.9(S) of 2015, which arose out of Kotwali (Hindpiri) P.S Case No.742 of 2014, corresponding to

G.R No. 4705 of 2014.

4. It is an admitted position that by the time, the opposite party No.2 was

granted bail by order dated 12.10.2019, only eight witnesses could be examined in the trial, out of 29 witnesses named in the charge-sheet. Presently, in all nine witnesses have been examined as informed by the learned counsels for the parties, and delay in trial, is being caused due to the fact that in the meantime, the working of the Courts have been badly affected due to the worldwide pandemic.

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5. There is allegation against the opposite party No.2 that he, being a Muslim by faith, falsely representing himself to be Hindu by faith, performed marriage with this petitioner, who is a Hindu by faith and a State level athlete, who came close with the opposite party No.2, during the practice of shooting in the Hotwar Shooting Range, Ranchi. It is alleged that the opposite party No.2 married this petitioner on 07.07.20014 according to Hindu rites, and after the marriage, the victim petitioner was coerced by the opposite party No.2 to perform the marriage in the Muslim manner also, and she was also asked to decry the Hindu religion and to adopt the Muslim religion, for which, she was subjected to cruelty and torture by various means, including physical assaults and sexual abuses. She had to be rescued from her matrimonial home with the help of the police.

6. Taking into consideration the allegations against the opposite party No.2, his bail applications were rejected seven times on merits by this Court.

Ultimately, the opposite party No.2 filed B.A No. 5667 of 2019, in which, the opposite party No.2 prayed for granting bail on the ground that he was in custody since 28.8.2014, and he had served more than half of the sentence, even if he is convicted and sentenced to undergo the maximum sentences for the offences charged. The said bail application was pressed by the learned senior counsel for the opposite party No.2 on that ground alone.

7. This Court, taking into consideration the period of custody of the opposite party No.2, allowed the bail application by order dated 12.10.2019, making it absolutely clear that the bail application was not being considered on merits, rather it was only on the basis of the period of custody undergone by the accused.

8. The plea of the learned counsel appearing for the C.B.I., that the opposite party No.2 is an influential person and he might influence the remaining witnesses during trial, was also duly taken care of by this Court, directing that

the opposite party No.2 shall keep himself aloof from the remaining prosecution witnesses, yet to be examined, and if it is found that he had tried to influence the witnesses, in any manner whatsoever, the C.B.I. may move the Court below for cancellation of his bail, which shall be considered by the Trial Court itself, without being prejudiced by the order passed by this Court. In addition to that, the opposite party No.2 was Cr. M. P. No. 3880 of 2019 also directed to deposit his passport in the Court below and was directed not to leave the Country without the permission of the Trial Court. It is this order, by which the present petitioner, who is the victim in the case, is aggrieved, and she has filed this application for cancellation of bail of the opposite party No.2.

9. Learned senior counsel appearing for the petitioner has submitted that taking into consideration the facts of the case, the opposite party No.2 could not have been released on bail irrespective of the fact of undergoing custody since 28.8.2014. Learned senior counsel has pointed out that one of the offences charged is Section 376 of the Indian Penal Code, for which, the maximum sentence prescribed is imprisonment for life, and in that view of the matter, the opposite party No.2 could not be released on bail on the ground that he had served more than half of the sentence.

10. Though the learned senior counsel appearing for the petitioner has assailed the order, granting bail to the opposite party No.2, but he has not made any allegation against the opposite party No.2 about any illegal action after granting him bail, or misuse of the privilege of bail, so as to disentitle him to the said privilege.

11. Learned senior counsel has placed reliance upon the decision of the Hon'ble Apex Court in Gobarbhai Naranbhai Singala Vs. State of Gujarat & Ors., reported in 2008 (3) SCC 775, wherein where, the bail granted to the respondent on the grounds (i) that the respondent was in judicial custody since March, 2004; (ii) that the trial had yet not commenced and no prosecution witness had been examined; and (iii) that the Court had tested the respondent twice by granting temporary bail to him with stringent conditions for a duration of one month each, and on both the occasions, the respondent had surrendered within time, without breach of any of the conditions, was cancelled by the Hon'ble Apex Court, laying down the law as follows :-

24. This Court in Amarmani Tripathi had held that while considering the application for bail, what is required to be looked is, (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing if released on bail; (v) Cr. M. P. No. 3880 of 2019 character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being tampered with; and (viii) danger, of course, of justice being thwarted by grant of bail.

25. In Panchanan Mishra v. Digambar Mishra this Court while considering the question of cancellation of bail, observed: (SCC pp. 147-48, para 13)

13. ... The object underlying the cancellation of bail is to protect the fair trial and secure justice being done to the society by preventing the accused who is set at liberty by the bail order from tampering with the evidence in the heinous crime ... It hardly requires to be stated that once a person is released on bail in serious criminal cases where the punishment is quite stringent and deterrent, the accused in order to get away from the clutches of the same indulge in various activities like tampering with the prosecution witnesses, threatening the family members of the deceased victim and also create problems of law and order situation.

26. We are of the view that the High Court has completely ignored the general principles for grant of bail in a heinous crime of commission of murder in which the sentence, if convicted, is death or life imprisonment.

12. Learned senior counsel has again placed reliance upon the decision of the Hon'ble Apex Court in Narendra K. Amin (Dr.) Vs. State of Gujarat and Anr., reported in 2008 (13) SCC 584, wherein also in the facts of that case, it was held that once it was found that bail was granted on untenable grounds, the same can be cancelled. Placing reliance on these decisions, it is submitted by the learned senior counsel for the petitioner that it is a fit case, in which, the bail granted to the opposite party No.2, be cancelled in the interest of justice, looking into the gravity of the allegations against the opposite party No.2.

13. Learned senior counsel appearing for the C.B.I. has supported the contention of the learned senior counsel for the petitioner and submitted that

only because of the fact that the opposite party No.2 had remained in custody since 28.8.2014, he could not have been granted bail in the facts of the case. Learned senior counsel for the C.B.I. also, however, has not alleged any misuse of the privilege of bail by opposite party No.2, so as to disentitle him of the privilege.

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14. Per contra, learned senior counsel appearing for the opposite party No.2 has opposed the prayer, submitting that after being released on bail, the opposite party No.2 has never misused the privilege of bail, and as such, the bail granted to him cannot be cancelled, as no case is made out for cancellation of his bail. Learned senior counsel submitted that if the opposite party No.2 misuses the privilege of bail, ample precaution for that has already been taken in the order dated 12.10.2019, granting him bail.

15. Learned senior counsel has also pointed out that out of the offences, for which, the opposite party No.2 is facing trial, only for Section 376 of the I.P.C, the maximum sentence prescribed is imprisonment for life, and for all other offences the punishments are lesser. It is submitted by the learned

senior counsel that offence under Section 376 of the I.P.C. has been alleged, in view of the allegation that the opposite party No.2, being a Muslim by

faith, falsely representing himself to be a Hindu by faith, married the petitioner, which marriage itself was void ab-initio and accordingly, the offence

under Section 376 of the Indian Penal Code would also be made out. It is pointed out by the learned senior counsel that in B.A No.5667 of 2019, the

opposite party No.2 had brought on record the Judgment passed by the learned Principal Judge, Family Court, Ranchi, in Original Suit No.15 of 2017,

which was filed by the present petitioner against the opposite party No.2, for a decree of nullity of marriage under Section 12(I)(c) of the Hindu

Marriage Act, as also seeking an alternative relief of decree of divorce on the ground of cruelty. It is pointed out by the learned senior counsel that

issue No. IV framed in the said suit was -

Whether consent of marriage was taken from petitioner by playing fraud upon her and therefore is liable to be declared null and void under Section 12

of the Hindu Marriage Act?

And this issue was decided, holding that -

----- no credible, trustworthy documentary evidence has been produced before this Court to prove and establish that the respondent is not a Hindu,

rather he is a muslim by birth or convert to muslim faith. In absence of any such proof, it cannot be said that there had been any concealment of

material fact regarding religion of the respondent. In the light of the above discussion, it is held that the marriage between the parties was a valid

Hindu Marriage and it cannot be treated voidable on the ground Cr. M. P. No. 3880 of 2019 under Section 12(I)(c) of the Hindu Marriage Act and no

decree of nullity can be passed. Issue No. IV is decided accordingly.

16. Learned senior counsel has pointed out that the decree of divorce has been granted in that case, on the ground of cruelty. It is submitted by the

learned senior counsel that in this view of the matter, even though, the charge has been framed for the offence under Section 376 of the Indian Penal

Code also, but it cannot be said that the opposite party No.2 could be denied bail even after remaining in custody for more than five years during trial.

17. Having heard learned senior counsels for the parties and upon going through the record, I find that by the time, the opposite party No.2 was

granted bail by order dated 12.10.2019, he had served more than five years of custody. Out of the offences charged, offence under Section 496 of the

Indian Penal Code is punishable with imprisonment up-to seven years and fine. Offences under Sections 323 and 298 of the Indian Penal Code are

punishable with imprisonment up-to one year each, and/or fine. Offences under Sections 354-A and 498-A of the Indian Penal Code are punishable

with imprisonment up-to three years each, and/or fine, and offence under Section 506 of the Indian Penal Code is punishable with imprisonment up-to

two years and/or fine. Accordingly, he had served more than half of the sentence for the offence under Section 496 of the Indian Penal Code, and had

served the period of maximum sentences for the other offences charged, except Section 376 of the Indian Penal Code.

18. So far as the offence under Section 376 of the Indian Penal Code is concerned, there is no allegation against the respondent No.2 of committing

rape prior to the marriage with the petitioner, and whatever allegations of sexual abuses are there, they are only after the marriage between the

parties.

19. In view of the finding of the competent Court in the matrimonial suit between

the parties, as quoted above, which had been brought on record in

B.A No.5667 of 2019, I do not see any reason as to why taking into consideration the period of custody of more than five years, the opposite party

No.2 could not be granted bail for the alleged offence under Section 376 of the Indian Penal Code.

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20. Section 436-A of the Cr.P.C., reads as follows:-

436A. Maximum period for which an undertrial prisoner can be detained.-- Where a person has, during the period of investigation, inquiry or trial

under this Code of an offence under any law (not being an offence for which the punishment of death has been specified as one of the punishments

under that law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that

law, he shall be released by the Court on his personal bond with or without sureties:

Provided that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such

person for a period longer than one-half of the said period or release him on bail instead of the personal bond with or without sureties:

Provided further that no such person shall in any case be detained during the period of investigation, inquiry or trial for more than the maximum period

of imprisonment provided for the said offence under that law.

Explanation.--In computing the period of detention under this section for granting bail, the period of detention passed due to delay in proceeding caused

by the accused shall be excluded.

21. In the facts of this case, I also do not find any reason as to why the opposite party No.2 could be denied the privilege of Section 436-A of the

Cr.P.C., particularly when nothing has been brought on record to the knowledge of this Court, that the opposite party No.2 ever misused the privilege

of bail granted to him by order dated 12.10.2019 in B.A No.5667 of 2019.

22. In that view of the matter, I do not find any illegality in the order granting bail to the opposite party No.2, and no case is made out for cancellation

of the bail.

23. There is no merit in this application and the same is accordingly, dismissed.