
(2001) 05 SHI CK 0015

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (M) No. 467 of 2001

Tarseema Chaudhary

APPELLANT

Vs

State of H.P.

RESPONDENT

Date of Decision : 04-05-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 439
Penal Code, 1860 (IPC) — Section 120B, 193, 313, 34, 344

Citation : (2002) 1 ShimLC 64

Hon'ble Judges : M.R. Verma, J

Bench : Single Bench

Advocate : M.S. Chandel, for the Appellant; Ashok Sharma, Assistant A.G. and Shubh Mahajan, Assistant A.G., for the Respondent

Final Decision : Dismissed

Judgement

M.R. Verma, J.—This is an application u/s 439 of the Code of Criminal Procedure moved by the accused-Petitioner (hereinafter referred to as the accused) for grant of bail to her in case FIR No. 50/2001 dated 9.4.2001 under Sections 313/498A, 354/120B/34/344/193 IPC and Section 7 of the MTP Act on the grounds that she is innocent and has been falsely implicated in the case and that there is no direct or indirect evidence indicating her involvement in the commission of any of the offences but she has been arrested merely for being harmed, harassed and humiliated in a dispute which is the outcome of the strained relations between one Raksha Kumari and her in-laws. It is also claimed that presently she is under treatment in I.G.M.C. and Hospital, Shimla since 18.4.2001 and is under judicial custody and is no more required for the purpose of investigation.

2. Case of the prosecution against the accused is that Raksha Devi was married to Manohar Lal resident of Village Ladha in the month of February, 2000. After about a month of the marriage her husband and in-laws started treating her with cruelty and her father-in-law Roshan Lal had also been outraging her modesty

even in the presence of his wife Satya Devi. Accused Roshan Lal had been compelling Raksha Devi to sign writings for cibly and under threat presumably with a view to create evidence against their cruel treatment met out to Raksha Devi. On 14.3.2001 accused Manohar Lal beat her up and asked her to bring a sum of Rs. 5,000 from her parents for treatment of his father. Thereafter on 22.3.2001 accused Roshan Lal and Satya Devi took Raksha Devi to a Hospital at Bharari under the pretext that she was required to be medically checked up. She was then taken to Om Clinic at Bad-da-ghat. In the said Clinic the accused" Tarseema Chaudhary (Petitioner herein) injected some medicine into the person of Raksha Devi whereby she became unconscious and on regaining consciousness she found that her three months" pregnancy had been terminated. Thereafter she was taken back to her matrimonial house and was kept confined in a room for 4 or 5, days and was not permitted to meet any one including her brother who had visited the place and was told that Raksha Devi was not in the house. On 8.4.2001 accused Roshan Lal and Satya Devi told Raksha Devi that she would be taken to a Court at Ghumarwin on the next day for making a statement. Raksha Devi realising some foul play slipped away and went to the house of her maternal Uncle Dev Raj and on 94.2001 FIR based on the afor esaid facts was lodged at Police Station Bharari. According to the prosecution, the investigation so far carried out prima facie reveal that the accused persons had committed the offences alleged to have been committed by them.

3. I have heard the learned Counsel for the accused and the learned Assistant Advocate General for the State and have also gone through the records.

4. The prosecution version which has briefly been set-out hereinabove prima facie discloses that a newly married woman has not only been treated with cruelty and to make false statements before the Panchayat exculpating the in-laws of their misdeeds but the accused also caused her to miscarry without her consent and against her will. Thus, evidently the offences alleged to have been committed by the accused persons including the accused/bail Petitioner are of heinous and grave nature for which one of the severest punishment in law has been provided for . It cannot be disputed that gravity of the offence and severity of punishment are the factors which must weigh against the grant of bail and more so when the matter is still under investigation. In such cases, the investigating agency must invariably be afforded reasonable opportunity of interrogating the accused thereby enabling it to collect material evidence on the basis of the disclosures/information given by the accused during the course of interrogation.

5. A perusal of the material placed on record prima facie reveals that the contention for the accused that she is innocent and has been falsely implicated in the case is simply unsustainable. There is evidence on record which prima facie show her involvement in the commission of the offence of causing miscarriage. She was arrested by the police on 13.4.2001 and was produced before the

concerned Magistrate with a prayer for remand to police custody on 14.4.2001 and was remanded by the Magistrate to police custody till 16th of April, 2001. The accused however complained of chest pain and giddiness on 14.4.2001. She was medically examined by the Medical Officer, In charge, Community Health Centre Bharari on the same day i.e. 14.4.2001 who has opined that at the time of examination the accused was medically and mentally fit. Nevertheless she was got examined in Civil Hospital Ghumarwin on the same day at 4.45. p.m. where she complained of chest pain, vomiting, heart burn and occasional shortness of breath and was therefore referred to medical specialist at District Hospital Bilaspur. Since then she is under treatment and is presently in I.G.M.C. and Hospital, Shimla. On expiry of aforesaid period of police remand the Investigating Officer moved an application before the concerned Magistrate for extending the period of police remand as the accused could not be interrogated because of her illness and the investigation remained incomplete. therefore, on 16.4.2001 the remand to police custody was extended till 17.4.2001 and on another application from 17.4.2001 to 18.4.2001. The Investigating Agency however could still not interrogate the accused as she was admitted in the Hospital. therefore in view of her admission for treatment the police prayed for her judicial remand because she could not be interrogated because of the alleged illness and in fact the investigation of the offence alleged to have been committed by her is held up for want of her interrogation.

6. As per the police report the police suspects the bona fide of the accuser's claim of being ill and it has been claimed that her husband is a President of the Gram Panchayat and by political pressure and on the pretext of illness she had been got admitted in the Hospital during the period when she was remanded to police custody. The fact that on her medical examination on 14.4.2001 by the Medical Officer, In charge, Community Health Centre, Bharari the accused was found medically and mentally fit, the suspicion of the investigating agency that the admission of the accused for treatment is a managed affair cannot be conveniently ruled out. In any case, keeping in view the facts and circumstances of the case particularly the allegations of having caused the miscarriage without being an authorized medical practitioner and without the consent and TJT against the will of the victim a fair opportunity is required to be afforded to the police to interrogate the accused, however, subject to the condition that such an interrogation will be carried out by the police when the accused is medically declared fit for such interrogation.

7. Be it stated that there is no allegation that the accused is not getting proper facilities and treatment. On the contrary she is under treatment in a State Level Medical Institute. therefore, unless the investigating agency has the opportunity to interrogate the accused she cannot be ordered to be released on bail because the apprehension of destroying the material evidence by her if released on bail cannot be ruled out in the facts and circumstances of the case.

8. In view of the reasons as stated hereinabove I am of the view that release of

the accused on bail at this stage will adversely affect the Investigation and interest of justice.

9. As a result, this application merits dismissal and is accordingly dismissed.