
(1989) 12 P&H CK 0035

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 7782-M of 1989

Yash Pal Jhanji

APPELLANT

Vs

Surinder Khanna and anr.

RESPONDENT

Date of Decision : 12-12-1989

Acts Referred:

Citation : (1990) 1 RCR(Criminal) 503

Hon'ble Judges : Jai Singh Sekhon, J

Advocate : D.S. Walia, M.R. Midha, Advocates for appearing Parties

Judgement

J.S. Sekhon, J.

1. Reply of the accused respondent has been filed today in Court.

2. Surinder Khanna accused respondent is facing trial for charge under section 302, Indian Penal Code, regarding the murder of his wife, before the Court of Additional Sessions Judge, Ludhiana. His application for bail was declined by the trial Court as well as by the High Court on merits. Thereafter, the accusedrespondent during the summer vacation moved another application before the Incharge Session Judge Mr. N.S. Bhatia for bail on the ground of his illness, but concealed the factum of the dismissal of his earlier application by the High Court. The Incharge Session Judge granted bail to the accused respondent on the basis of the following report of the doctor, as reproduced in the impugned order of bail :

"With reference to your letter No. 1335 dated 4.7.1989 regarding treatment of Surinder Khanna. He is admitted in Jail Hospital since 4.7.1989 as a case of bleeding piles with lumber intervertebral disc prolapse. He is on antiinflammatory and antipiles drugs. He was also given traction for his back problem. His recovery is not satisfactory. He is advised not to move about. Since we are not having any general as well as orthopaedic Surgeon in our Jail hospital, so he needs an expert treatment."

3. The petitioner happens to be the brother of the deceased and has sought the cancellation of the bail on the ground that the accusedrespondent had concealed the facts and procedure the bail order on misrepresentation. It is also maintained that no case for bail on the ground of illness has been made out as such like ailment could be easily treated in the hospital even during custody.

4. In the return filed by the accused respondent it is stated that the Incharge Sessions Judge has rightly granted bail to the accusedrespondent and that no case is made out for cancellation of bail.

5. In a State case, it is for the prosecution to move for cancellation of bail, yet in the present case as the accused has misled the trial Court by concealing the factum of dismissal of his earlier application for bail by the High Court, it is considered to be a fit case for taking cognizance of the matter. Bleeding piles or lumber intervertebral disc prolapse cannot be said to be such a serious ailment which cannot be treated in the local Civil Hospital or any other hospital at Ludhihana while the accusedrespondent was still in custody. It appears that in order to overcome the propriety of filing bail application in High Court, the accused had deliberately suppressed the factum that the High Court had already declined bail to him while procuring this bail order from the Incharge Sessions Judge. Thus, the impugned order granting bail is ordered to be cancelled. The accused respondent is directed to surrender before the trial Court within a week of this order and he shall be taken in custody.

6. The trial Court is however, directed to conclude the prosecution evidence by January 12, 1990.

This application is thus allowed.