

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ BAIL APPLN. Nos. 1355/2009, 1588/2009 &1926/2009

% Reserved on: 11th December, 2009
Date of Decision: 14th December, 2009

DEEPA DEVI Petitioners
DAYA RAM and
JAGDISH

Through:Mr. S.D. Singh and Mr. Rahul
Kumar Singh, Advocates

!

versus

\$ STATE OF NCT OF DELHI Respondent
Through:Mr. Amit Sharma, APP for the
State, Insp. J.S. Mishra, PS Burari.

*** CORAM:**
HON'BLE MR. JUSTICE V.K. JAIN

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| 1. | Whether the Reporters of local papers
may be allowed to see the judgment? | Yes |
| 2. | To be referred to the Reporter or not? | Yes |
| 3. | Whether the judgment should be
reported in the Digest? | Yes |

: V.K. JAIN, J.

1. These are three petitions for grant of anticipatory bail. The petitioner Daya Ram is the father-in-law, Deepa Devi is the mother-in-law and Jagdish is the brother-in-law of the deceased Savita, who was married to Purshottam on 13th April, 2006 and

who committed suicide on 31st May, 2009, within 7 years of her marriage.

2. Prakash, brother-in-law of the deceased Savita was granted anticipatory bail by this court on 11.12.2009.

3. As per the status report filed by the respondent, the evidence collected during investigation shows that the deceased Savita was physically and mentally tortured by the petitioners as well as her husband. It has been further stated in the status report that during the course of investigation raids were conducted but all of them are absconding and concealing themselves deliberately in order to avoid investigation and arrest. The bail application of the petitioners have already been dismissed by the learned Addl. Sessions Judge.

4. During the course of arguments, the learned Addl. Public Prosecutor placed on record the photocopy of the process issued by Shri J.P. Nahar, Metropolitan Magistrate, Delhi against the petitioners Deepa Devi, Daya Ram and Jagdish under section 82 of the Code of Criminal Procedure. The report of the process server shows that after public proclamation, one copy of the process was affixed on the spot and another copy was affixed on the notice board of Tis Hazari Courts. One copy of the process

was also affixed at the gate of ISBT, Kashmiri Gate. The learned MM had also directed that the process issued against the petitioner under section 82 of Cr.PC be also executed by way of publication in English and Hindi national newspapers. Though the copy of the newspaper publishing proclamation has not been placed on record, the learned Addl. Public Prosecutor, on instructions from the Investigating Officer who was present in the court, stated that the proclamation has been duly published in the newspaper in terms of the order of the learned MM. A copy of the order issued by the office of the Commissioner of Police, Delhi seeking publication of proclamation in Times of India and Amar Ujala has also been placed on record. Though the learned counsel for the petitioners disputed the issue and publication of the process under section 82 of Cr.PC , considering the documents filed by the prosecution, I do not see any reason to disbelieve the statement made by the learned Addl. Public Prosecutor on instructions from the IO. I am, therefore, satisfied that a process under section 82 of Cr.PC was issued against the petitioners.

5. In my view, a person who is absconding despite rejection of his application for anticipatory bail by the court of Sessions and

despite issue and publication of process against him under section 82 of Cr.PC, is not entitled to grant of anticipatory bail save in an exceptional case, justifying departure from this principle. But for existence of peculiar and special facts and circumstances of a given case, the Court would not be justified in considering the anticipatory bail application of such a person on merits. A person who is found to be absconding, ordinarily, is not entitled to grant of such a discretionary relief. He must surrender before the concerned court and seek regular bail. If anticipatory bail is granted to a person who is evading the process of law by absconding, despite rejection of his petition for grant of anticipatory bail and publication of proclamation against him under section 82 of Cr.PC, that would encourage the criminals to go underground, evade the process of law by adopting dubious means.

6. In *Jagtar Singh vs. Satendra Kaur* 2002(6) Scale, the Hon'ble Supreme Court observed that normally when the accused are absconding, there is no question of granting anticipatory bail or regular bail. In *State of Maharashtra vs. Mohd. Sajid Hussain* 2008(1) SCC (Crl.) 176, the Hon'ble Supreme Court, while examining the principles governing grant of anticipatory bail,

held that one of the four factors relevant for considering the application for grant of anticipatory bail is the possibility of the applicant, if granted anticipatory bail fleeing from justice. If a person is found to be absconding despite raids conducted by the police, benefit of anticipatory bail by the Sessions court and issue and publication of process against him under section 83 of Cr.PC, the prosecution would not be unjustified in claiming that no anticipatory bail is granted to such a person who is not likely to attend the trial and may flee from justice. Therefore, in the absence of exceptional and peculiar circumstances, the court would not be justified in granting anticipatory bail to such a person.

7. After the order had been reserved, the learned counsel for the petitioners has, in the afternoon, submitted photocopies of the following judgments, without supplying copies or list of judgments to the Addl. Public Prosecutor:

- i). JT 2008 (7) SC 407 -Suresh Chander Raman Lal vs. State of Gujarat & Anr.
- ii). 98(2002) DLT 181 – Dalmiya Resorts Int. Pvt. Ltd. vs. Deepa Gupta.
- iii). 93(2001) DLT 804 – Sunil Kumar vs. State & Anr.

- iv). 106 (2003) DLT 439 – G. Sagar Suri vs. State & Anr.
- v). 132 (2006) DLT 692 –Sanjay Chaturvedi vs. State.
- vi). 143(2007) DLT 744 –Rohit Kumar @Raju vs. State of NCT of Delhi; and
- vii). Order dt. 8.4.2009 passed in Criminal Revision Petition No.645 of 2007 passed by this Hon'ble Court.

8. In the case of *Sureshchandra Ramanlal (supra)*, the medical report on the health of the appellant showed that he was suffering from Lumbar Canal Stenosis with severe Lumbar Spondylitis of L2-3-4 and L5S1. He had sustained fracture of ankle for which he was operated. He was a known heavy diabetic on oral anti-diabetic and was severally obese. He was not in a position to do his daily activities without at least two assistants and was absolutely bed ridden. There were 49 accused in the case and each one of them had already been enlarged on bail. The charge against the appellant was under section 406,409,420,439,471 and 120B of IPC. The Chairman, Vice-Chairman, Managing Director, a number of officers and 30 loanees of the bank had been enlarged on bail. In the facts and circumstances of the case, more particularly having regard to the health of the appellant, anticipatory bail was granted to him. The facts of the

present case are altogether different. None of the petitioners is suffering from such an acute illness. Moreover, in the present case, the process issued against the petitioners under section 82 Cr.PC has already been executed by proclamation, affixation and publication and has not been challenged in any proceedings.

9. In the case of *Dalmiya Resorts Int. Pvt. Ltd.(supra)* this Court noted that absconding does not necessarily imply change of place and the petitioner being a company the question of absconding does not exist. This was the case of non-performance of section 82(1) and (2) of Cr.PC and the process was issued against the accused persons without noticing the report of their warrants. The judgment has absolutely no applicability to the facts and circumstances of the present case. Moreover, the process issued under section 82 of Cr.PC is not under challenge before this court.

10. In the case of *Sunil Kumar (supra)*, no effort had been made to serve the warrant on the address given in the FIR and the court did not record satisfaction that the petitioner was concealing himself. In these circumstances the order issuing proclamation was set aside. Again the judgment has no application to the present case.

11. In *G. Sagar Suri (supra)*, this Court observed that it is mandatory for the Metropolitan Magistrate to issue summons before issuing coercive process of warrant of arrest and initiating process under section 82 and 83 of Cr.PC. Again this judgment has no applicability as the petitioners have not filed any petition challenging the process under section 82 of Cr.PC

12. In the case of *Sanjay Chatruvedi(supra)*, the petitioner was not absconding and was in fact appearing through his counsel. In these circumstances, this court took the view that non-bailable warrant could not have been issued and process under section 82 and 83 of Cr.PC could not have been issued against him. The facts of the present case are altogether different.

13. In the case of *Rohit Kumar(supra)* this court held that an attachment warrant could be issued only after issuance of proclamation under section 82 Cr.PC and that there must be a report of absconding or concealment, before a process under section 82 can be issued. Again, this judgment is of no help to the petitioner as they have not challenged the process issued against them. This judgment does not help the petitioners in any manner.

14. In the case of *Yogender Pratap Singh (supra)* an effort was

made by the petitioner to appear through his counsel without seeking bail and his application for that purpose was rejected by the trial court. Again, this judgment has no applicability, in the facts of the present case.

15. For the reasons given in the preceding paragraphs, I am of the considered view that since the petitioners are absconding and these are no exceptional circumstances, entitling them to this relief, despite their being absconders, they are not entitled to anticipatory bail. The bail application Nos. 1355/2009, 1588/2009 and 1926/2009 are hereby dismissed.

V.K. JAIN,J

DECEMBER 14, 2009
RS