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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 27 OF 2015

Mrs. Livia Livo Mathias

..Applicant.

Vs.

The State of Maharashtra & Anr.

..Respondents

Mr. Amit Date with Ms. Anjali Thakoor and Mr. Satiskumar Chettiyar i/b
Mr. Shrikant Bhat for Applicant.

Ms. Rutuja Ambekar, APP for Respondent-State.

Mr. Kalpesh R. Yadav for Respondent No.2.

CORAM: A.S. GADKARI, J.

DATE : 17th December 2015.

P.C.

1 This is an application for cancellation of bail granted to the respondent no.2, by the learned Additional Sessions Judge, Greater Mumbai, by its order dated 1st January 2015 in Bail Application No.469 of 2014 arising out of C.R No.301 of 2014 registered with Bangur Nagar Police Station Mumbai under Section 307 of the Indian Penal Code read with Sections 37 and 135 of the Mumbai Police Act. The present application has been filed by the victim, original complainant, Smt. Livia L. Mathias.

2 The first information report dated 26.11.2014 lodged by the complainant with the Police specifically and categorically states that, she knew the respondent no.2 very well as he was residing at Versova and was in her acquaintance. That on the date of incident i.e. 25.11.2014 at about 21.30 hrs (9.30 p.m.) after completing her work, she was proceeding towards her destination with her colleague Santosh Jatan by a car. At about 21.45 (9.45 p.m.) a.m. she stopped near 'Mind Space' at Malad (W) for charging her mobile phone in the car. At that time all of a sudden the respondent no.2 came on an Activa Scooter. The respondent no.2 was very angry and his face was furious. The respondent no.2 asked the complainant to roll down the window glass. That when the complainant did not pull down the window glass, the respondent no.2 took out a big size chopper from his pant pocket and broke the glass of the window of the complainant's car. The respondent no.2 thereafter gave a blow with the said chopper on the neck of the complainant. When the complainant tried to ward off the other blow, she sustained injuries by the said chopper on her hands. In the meantime the colleague of the complainant got down from her car and tried to caught the respondent no.2, when the respondent no.2 fled away from the scene of offence from his Activa Scooter. As the complainant was bleeding profusely and was unable to drive the car, her

colleague Santosh Jatan took her from an auto-rickshaw to the Siddharth Hospital, Goregaon (W), Mumbai. As the injury was, grievous in nature, the complainant was subsequently shifted to the Kokilaben Hospital, Andheri (W) by an ambulance.

3 The victim-complainant was admitted to the hospital from 26.11.2014 to 6.12.2014. The first medical certificate issued by the Medical Officer attached to the Municipal Corporation Greater Mumbai Hospital dated 25.11.2014 bearing MLC no.9029 has mentioned the following injuries:-

“Sharp neck injury

L/E deep lacerated wound

10cm x 2 cm x skindeep.

The said Medical officer advised surgical reference. The said medico legal certificate has also specified by way of diagram the grievousness of the injury. The said medico legal certificate dated 25.11.2014 is at page-71 of the present application and the diagram is at page no.72, wherein the measurement of injury is described as 12 x 4 x 7 cms. The said medico legal certificate mentions about two other injuries caused to the complainant as, (i) CLW to right thumb 2 cm x 1 cm and (ii) CLW left forearm 7xm x 1 cm. It appears from the diagram of the injury and the

measurements mentioned therein that the injury caused by the respondent no.2 to the complainant by the chopper on her neck was of the dimension of 12 cm x 4cm x 7cm. It therefore appears that the depth of the injury was 4cm.

4 During the course of investigation, the respondent no.2 was arrested on 26.11.2014. That when the respondent no.2 was in police custody, he expressed his willingness to show the place where he had concealed the chopper used in the commission of crime and the clothes which were on his person at the time of commission of offence. Accordingly, the discovery of the chopper was effected by drawing a panchanama dated 29.11.2014. Likewise the clothes which were on the person of the respondent no.2 on the date of commission of the offence were also seized on 30.11.2014 by effecting a detailed panchanama. That the chopper and the pant were having blood stains on it. The respondent no.2 thereafter preferred an application for his release on bail as contemplated under Section 439 of Cr. P.C. The learned Trial Court by its order dated 1.1.2015 was pleased to release the applicant on bail. The said order is impugned herein.

5 The learned Counsel for the applicant-original complainant submitted that the learned Trial Court, in the impugned order has erred in

observing that the first informant did not disclosed the motive behind the assault. He further submitted that the Trial Court has erred in observing that the applicant did not give any plausible explanation as to why the respondent no.2 committed assault on her. That the learned Trial Court has further erred in holding that in the statement of Santosh Jatan, he has not mentioned the name of the respondent no.2 and he has mentioned only attack by unknown person. He submitted that the said Santosh Jatan had an opportunity to see the respondent no.2 while committing the said crime. He submitted that the learned Trial Court further committed error in holding that, the nothing has been recovered or discovered at the instance of the accused and though sufficient opportunity was given to the police to record the statement of the eye-witnesses in last more than one month, the prosecuting agency did not do the same. He further submitted that the order passed by the learned Trial Court is totally perverse. He submitted that the Trial Court has passed the said order in a very casual manner and without taking into consideration the gravity of the offence, heinousness of the crime and other related aspects which ought to have been taken into consideration in view of the settled position of law by the Apex Court. He therefore urged that the present application may be allowed and the impugned order dated 1.1.2015 may be set aside by cancelling the bail

granted to the respondent no.2.

6 The learned Counsel for the respondent no.2 vehemently opposed the application and submitted that the learned Trial Court was right in observing the aforesaid facts. He submitted that the complainant nowhere stated in the first information report about the motive behind the crime. He has brought to my notice the statement of Santosh Jatan wherein the said eye-witness has stated that an unknown person attacked the complainant by means of chopper and gave a blow of the same on her neck. As far as the observations made by the learned Trial Court in para no.10 wherein it has been held that, nothing has been recovered or discovered at the instance of accused, the learned Counsel for the respondent no.2 submitted that it has to be read as nothing more is to be recovered or discovered at the instance of the applicant and therefore the learned Trial Court was pleased to grant bail to the respondent no.2. He submitted that once the bail is granted to the accused, it need not be cancelled. That as of today charge sheet is filed and therefore, there is no need to cancel the bail granted to the respondent No.2. He lastly contended that after release on bail, the Respondent No.2 did not violate the conditions of the bail and therefore there is no necessity to cancel the bail of the respondent no.2.

7 At this stage, it will be useful to make reference to, two decisions of the Supreme Court namely (i) Puran Vs. Rambilas & Anr. reported in 2001 AIR SCW 1935 and (ii) Dinesh M.N. Vs. State of Gujarat reported in (2008) 5 SCC 66.

The Supreme Court in the case of Puran vs. Rambilas (supra) while laying down the parameters for cancellation of bail has held that, one such ground for cancellation of bail, would be where ignoring material and evidence on record a perverse order granting bail is passed in a heinous crime of this nature and that too without giving any reasons, such an order would be against principles of law. It is further held that the interest of justice would also require that such a perverse order be set aside and bail be cancelled. That therefore, an arbitrary and wrong exercise of discretion by the Trial Court has to be corrected. The Supreme Court in para no.10 has held that, further it is to be kept in mind that the concept of setting aside the unjustified, illegal or perverse order is totally different from the concept of cancelling the bail on the ground that accused has misconducted himself or because of some new facts requiring such cancellation.

The Supreme Court in the case of Dinesh M.N. Vs. State of

Gujarat (supra) while relying on the ratio laid down in the case of Puran Vs. Rambilas has further held that even though the re-appreciation of the evidence as done by the Court granting bail is to be avoided, the Court dealing with an application for cancellation of bail under Section 439(2) can consider whether irrelevant materials were taken into consideration. That is so because it is not known as to what extent the irrelevant materials weighed with the Court for accepting the prayer for bail.

8 It is the fact on record that the respondent no.2 has alleged to have committed the ghastly attack on the applicant by using a deadly weapon. The applicant has suffered the injuries as stated in para no.3 hereinabove. The discovery of the chopper at the instance of respondent no.2 was made by effecting the detailed panchanama on 29.11.2014. The discovery of the clothes of the applicant was conducted on 30.11.2014 wherein his pant/trouser was found with blood stains. In this background the finding of the learned Trial Court recorded in para no.10 of the impugned order dated 1.1.2015 is not only contrary to the record but also perverse. It is further to be noted here that non mentioning of the motive at the instance of respondent no.2 behind the alleged crime in the first information report does not give any benefit to the applicant as the present case is based on ocular evidence. It is the settled position of law that in a

case of ocular evidence, motive assumes least importance. In the present case the applicant was knowing the respondent no.2 and has specifically and categorically attributed the role of assault to him. As far as the finding recorded by the Trial Court to the effect that the eye-witness Santosh Jatan has not mentioned the name of the applicant in his statement and has only referred to 'unknown person', in the absence of any evidence on record, that the said witness was aware of the name of the respondent no.2, the knowledge of the name cannot be expected from the said eye-witness.

9 I have perused the entire record produced before me. After taking into consideration the evidence available on record, and finding recorded by the learned Trial Court, I am of the opinion that the perversity as highlighted in Puran's case(supra) which has further been elaborated in the case of Dinesh M.N (supra) by the Supreme court, I am of the opinion that the Trial Court has taken into consideration irrelevant material, thereby adding vulnerability to the order granting bail to the respondent no.2. The irrelevant material is of substantial and not of a trivial nature. Consideration which weighed with the learned Trial Court while releasing the respondent no.2 on bail by its order dated 1.1.2015, is undoubtedly contrary to the evidence which was already collected by the Investigating Agency and which was on record. The findings recorded by the learned

Trial Court in para no.10 of the impugned order are undoubtedly not only erroneous but also perverse in nature adding vulnerability to the order granting bail.

10 In the circumstances mentioned herein above, I have no hesitation in setting aside the order dated 1.1.2015 passed by the learned Additional Sessions Judge, Greater Mumbai in Bail Application No.469 of 2014 and the same is hereby quashed and set aside. The bail granted to the respondent no.2 by the impugned order dated 1.1.2015 in Bail Application No.469 of 2014 arising out of CR No.301 of 2014 registered with Bangur Nagar Police Station, Mumbai is hereby cancelled. The respondent no.2 is hereby directed to surrender himself before the Investigating Officer within a period of two weeks from 5th January 2016.

11 The application is allowed in the aforesaid terms.

12 All concerned to act upon an authenticated copy of this order.

(A.S. GADKARI,J.)