

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

LD-VC Criminal Application [ABA] No.1009 of 2020

Sanjay Kumar Singh

vs.

Smt. Suman w/o Vinod Singh & others

=====

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

=====

Court's or Judge's Orders

Shri A.I. Ragit, Advocate for the Applicant.
 Shri Anil Mardikar, Senior Advocate with Shri C.R. Thakur,
 Advocate for Non-Applicant Nos.1 to 4.
 Shri S.S. Doifode, A.P.P. for Respondent No.5/State.

CORAM : **S.M. MODAK, J.**
RESERVED ON : **21st AUGUST, 2020**
PRONOUNCED ON : **25th AUGUST, 2020**

Hearing was conducted through Video Conferencing and the learned Counsel agreed that the audio and visual quality was proper.

02] The only issue involved in this application is whether the learned Additional Sessions Judge exercised discretionary powers (while allowing anticipatory bail to non-applicants) properly? And whether the said order needs interference?

03] This proceeding is started on the motion of first informant Sanjay Kumar Singh. He is father of the deceased Nidhi. He is taking recourse to the powers of this Court under Section 439(2) of the Code of Criminal Procedure. He prays for cancellation of the bail granted by the trial Court. The trial Court granted anticipatory bail vide order dated 23/06/2020.

04] Deceased Nidhi committed suicide by hanging on 05/06/2020 at matrimonial house at Indrayani Nagar, Gorewada in the jurisdiction of Gittikhadan Police Station, Nagpur. On getting information, her father applicant Sanjay Kumar Singh, resident of District Mau (Uttar Pradesh), came to Nagpur and lodged complaint against these non-applicant No.1 to 4 and one Anjali Singh (who is sister-in-law of the deceased). During lifetime, deceased informed to her father and other relatives about ill-treatment meted out to her on account of non-fulfillment of dowry. Police registered an offence under Sections 304-B, 306 & 498-A read with Section 34 of the Indian Penal Code and under Sections 3 & 4 of the Dowry Prohibition Act.

05] The learned Additional Sessions Judge, Nagpur vide his impugned order protected the non-applicants and co-accused Anjali Singh from arrest by putting some conditions. Learned Senior Advocate Shri Anil Mardikar is right in his submission that neither the first informant nor the State has moved for cancellation of bail of co-accused Anjali Singh. Learned Advocate Shri Ragit for the applicant contends that her order was separate and he will file separate application for cancellation of bail once he will get instructions. He expressed difficulty in taking steps due to COVID situation. Present prayer has to be decided independently.

06] Learned Advocate Shri Ragit argued vehemently on behalf of applicant/first informant. Learned Additional Public Prosecutor Shri Doifode

supported prayer for cancellation and relied upon the case diary. Whereas, learned Senior Advocate Shri Anil Mardikar supported the order.

ABOUT THE ORDER

07] With their assistance, I have read the order impugned. It is very cryptic order. It consists of 5 paragraphs. I tried to find out the reasons in the said order. I do not find any reason given in the said order. It is said that reasoning is the soul of any judgment or order. Paragraph Nos.2 & 3 consist of story of the prosecution. Whereas, in paragraph No.4, the learned Judge has noted down the arguments advanced on behalf of the accused persons. While, writing down his conclusion in paragraph No.5, the learned Judge observed :

"Having regard to the submissions made at bar by the learned Advocate and considering the facts and circumstances of the record, it reveals that offences are registered against the applicants. The apprehension in the mind of applicants of their arrest is well founded. Therefore, if some conditions are imposed, the purpose of investigation will suffice. The applicants are ready to abide by all the conditions as imposed by this Court".

08] This much is the reasoning given by the learned Judge. He has nowhere opined, why custodial interrogation is not required? He has nowhere opined about seriousness of the offence. He has nowhere opined, what are the allegations against individual accused? So the impugned order is an un-reasoned

order. Ultimately, the higher Court will come to know about application of judicial mind or not only on reading the order and only on ascertaining the reasons. I find both the essentials are absent in the said order.

CITATIONS

09] It will be material to consider the law on this point. All have relied upon different citations. With their assistance, I have perused them. It is true that the law on the point of cancellation of bail is no more *res integra*. Certain principles have been laid down in those judgments. In nutshell, they are as follows :

RELIED UPON BY ACCUSED

Myakala Dharmarajam & Ors. Etc. vs. The State of Telangana & Another **Criminal Appeal Nos.1974-1975 of 2019** **(@ SLP (Crl.) Nos.8882-8883 of 2019)**

[a] Bail already granted can be cancelled on account of non-consideration of materials or on account of subsequent events.

[b] Bail can be cancelled where the order suffers from serious infirmities resulting in miscarriage of justice.

[c] Even if materials are not discussed in detail, there is an indication that entire material was perused before grant of bail.

[d] It was a case of grievance about non-consideration of the materials and subsequent event.

**Dolat Ram and Others vs. State of Haryana -
(1995) 1 SCC 349**

[e] Rejection of bail in non-bailable case at the initial stage and cancellation of bail so granted, have to be considered and dealt with on different basis.

[f] Very cogent and overwhelming circumstances are necessary for an order directing cancellation of bails.

[g] It was a case of cancellation of anticipatory bail of relatives of the husband. It was a case of dowry death. High Court cancelled the bail and order was set aside by the Apex Court.

RELIED UPON BY APPLICANT

**Bhagirathsinh Judeja vs. State of Gujarat -
1984 CRI.L.J. 160**

[h] It is now well settled by catena of decisions of the Supreme Court that the power to grant bail is not to be exercised as if punishment before trial is being imposed.

[i] It was a case of grant of regular bail.

**Balbir Kumar Datta vs. State & Ors.
2000 SCC OnLine Del 936**

[j] Regular bail and anticipatory bail granted in dowry death case were cancelled by the High Court of Delhi.

Shri Om Prakash Gupta vs. Sh. Mukesh & Anr.
1993 SCC OnLine Del 58

[k] Nonspeaking and mechanical order granting regular bail was cancelled by the High Court of Delhi. It was a case of dowry death. The Court considered the importance of presumption under Section 113-B of the Indian Evidence Act even at bail stage.

RELIED UPON BY A.P.P.

Puran vs. Rambilas & anr. - (2001) 6 SCC 338

[l] This case involves cancellation of regular bail granted to some accused, whereas rejecting the prayer for cancellation of bail to some other accused persons.

[m] On facts, order of the High Court cancelling bail was upheld.

[n] Giving reasons is different from discussing merits or demerits.

[o] At the stage of granting bail a detailed examination of evidence and elaborate documentation of the merits of the case has not to be undertaken. What the Additional Sessions Judge had done in the order dated 11/09/2000 was to discuss the merits and demerits of the evidence. That was what was deprecated. That did not mean that whilst granting bail some reasons for prima facie concluding why bail was being granted did not have to be indicated.

Samunder Singh vs. State of Rajasthan & ors.
AIR 1987 SC 737

10] The Hon'ble Supreme Court has sounded a serious note of caution for future while granting anticipatory bail in dowry death cases. The Court has to see, whether it will cause prejudice to the prosecution by its very nature and timing.

11] Learned Senior Advocate Shri Mardikar contends that law laid down in Dolat Ram's case still holds good and is not set aside by the Apex Court in Puran's case. It is true that the Hon'ble Supreme Court in the case of Puran has referred about the observations in the case of Dolat Ram (paragraph 10).

CONCLUSION

12] It is true that cancellation of bail already granted has got serious consequences. It affects the liberty of the individual. But, it is also true that grant of regular bail and grant of anticipatory bail stand on different footing. On consideration of materials collected during investigation, the Court decides whether to grant regular bail or not. Whereas, in anticipatory bail, the Court considers whether allegations are false and whether custodial interrogation is required? So, the Court decides such request in order to determine, whether arrest is required or not. The Court balances the right of an individual as to liberty and right to carry out the investigation.

13] Hence, the responsibility on Court is onerous while deciding request for anticipatory bail. What are these parameters, are considered by the Hon'ble Supreme Court in case mentioned below :

P. Chidambaram vs. Directorate of Enforcement
(2019) 9 SCC 24

[a] This case involves allegation of money laundering by Ex-Finance Minister. While reiterating the intent behind introduction of Section 438 of Code of Criminal Procedure, it is observed -

“.... is to safeguard the individual's personal liberty and to protect him from the possibility of being humiliated and from being subjected to unnecessary police custody. However, the court must also keep in view that a criminal offence is not just an offence against an individual, rather the larger societal interest is at stake. Therefore, a delicate balance is required to be established between the two rights - safeguarding the personal liberty of an individual and the societal interest.”

[b] While reiterating the importance of arrest, the Hon'ble Supreme Court observed -

“Ordinarily, arrest is a part of procedure of the investigation to secure not only the presence of the accused but several other purposes. There may be circumstances in which the accused may provide information leading to discovery of material facts and

relevant information. Grant of anticipatory bail may hamper the investigation. ,It may frustrate the investigating agency in interrogating the accused and in collecting the useful information and also the materials which might have been concealed. Success in such interrogation would elude if the accused knows that he is protected by the order of the court.”

FACTUAL OBSERVATIONS

14] No doubt it is true that the offence under Section 304-B of Indian Penal Code is a serious offence. There is a maximum punishment of life imprisonment prescribed for this offence. The marriage took place on 24/06/2019 and deceased committed suicide on 05/06/2020. It means, she put to an end to her life within 7 years of marriage. The learned Judge has overlooked these facts. The learned Judge has also over looked to the presumption as to dowry death laid down under Section 113-B of the Indian Evidence Act. It is no doubt true that ill-treatment was on account of payment of dowry.

15] I have perused the case diary. This is not the correct stage for disclosing the details. However, some details need to be disclosed. We have to ascertain the particulars of the allegations and against which accused, they are made. They are as follows :

[a] There was a demand of Rs.15.00 lakhs cash and jewellery of Rs.5.00 lakhs at the time of marriage.

[b] An amount of Rs.9.00 lakhs was transferred

in the bank account of accused Vinod Naresh Singh.

[c] Bank details from S.B.I. are procured. Money was transferred on two occasions as it was prior to marriage. (During arguments learned Senior Advocate Shri Mardikar tries to offer an explanation that marriage was performed at native place of Uttar Pradesh and money was paid for travelling expenses.

[d] There is an allegation of payment of Rs.5.00 lakhs in cash and jewellery of Rs.5.00 lakhs at the time of marriage.

[e] There was further demand of four wheeler or to pay cash in lieu of that.

[f] Even accused Brijnath Singh, resident of District Azamgarh (Uttar Pradesh) was told of this demand. He again reiterated that demand.

[g] The first informant came to Nagpur on 08/10/2019 and took the deceased to native place at Uttar Pradesh.

[h] During that stay, husband/accused Vinod Singh came to Uttar Pradesh and he assured not to repeat the incidents again.

[i] On 07/02/2020, father-in-law Vinod and elder father-in-law Brijnath came to the house of first informant. They assured not to repeat the incidents and on that assurance, deceased went to Nagpur.

[j] Sister-in-law came from Delhi and all were torturing her on account of dowry.

[k] Deceased was pregnant and she miscarried the pregnancy due to beating on her stomach. It was told to father on phone in the month of April 2020.

[l] The first informant talked to accused on phone and there was decision to sit and discuss the issue once the lock down will be over.

[m] The deceased told the first informant on 04/06/2020 to take her back immediately, otherwise the accused will kill her.

16] During investigation, the police have also recorded statements of witnesses. They more or less corroborate the allegations made by the first informant. Furthermore, the police have collected printout of messages in between deceased and one Khushboo Deveshkumar (relative). It reflects convening the ill-treatment meted out to the deceased.

17] If we consider all these factors, it is clear that there are allegations of ill-treatment on account of dowry. It was communicated to the relatives by the deceased during her life time. Accused Suman (mother-in-law), accused Vinod (father-in-law) and accused Ajay (husband) have demanded money with the deceased and her relatives. They all were residing at matrimonial house, whereas, accused-Brijnath

Singh resides at Azamgarh. But, he has also reiterated the demand with the first informant. So, I find allegations against every non-applicants. They may not be the same against all.

18] If such serious allegations are there, police has to be given an opportunity of custodial interrogation. There are certain issues, which can be unearthed only during custodial interrogation. Here accused Suman is lady, but she is not entitled to ask for different yardstick at least at the stage of anticipatory bail. The learned Judge granted anticipatory bail by putting conditions. The non-applicants have produced copies of attendance sheet. But, interrogation during attendance and interrogation after arrest have got different significance. This is not the stage to opine about truthfulness about explanation offered for accepting the money (i.e. for travelling expenses).

19] The learned Judge has granted bail mechanically. There is non-application of judicial mind. There is no discussion on allegations and right of police to investigate. The impugned order need to be set aside on two grounds. First is on non-application of judicial mind and second is on merits. On perusal of papers, I am satisfied that there is a need for custodial interrogation. Hence, the order needs interference. Hence, the order :

ORDER

- i. The application is allowed.

- ii. The order dated 23/06/2020 passed by the Additional Sessions Judge, Nagpur vide Misc.Criminal Application No.1291/2020 is hereby set aside.
- iii. Anticipatory bail granted to non-applicant Nos.1 to 4 is hereby cancelled.
- iv. Non-applicant Nos.1 to 4 are hereby directed to surrender before the police within seven days from today.
- v. The application is disposed of accordingly.
- vi. This order be communicated to the learned Counsel appearing for the parties, either on the email address or on WhatsApp or by such other mode, as is permissible in law.

JUDGE

P.S. :

After pronouncement of the order, learned Senior Advocate Shri Mardikar for non-applicant Nos.1 to 4 has requested to differentiate the case of the husband from other accused persons. So also, he seeks three weeks' time for surrender. It is opposed by learned Advocate Shri Ragit for the applicant and learned A.P.P. Mrs. Swati Kolhe for the State. Hence, the condition No. **iv** is modified as follows :

iv. Non-applicant Nos.1 to 4 are hereby directed to surrender before the police within three weeks from today. They are also directed to attend Gittikhadan Police Station, Nagpur on every Thursday and Sunday from 10:00 a.m. to 12:00 p.m. during that period.

JUDGE

Sandesh
Waghmare

Digitally signed by
Sandesh
Waghmare
Date: 2020.08.25
12:13:26 +0530

*sandesh