

09.01.2023
Sl. No.54
akd

C. R. M. (DB) 1366 of 2022

In Re : An application for cancellation of bail under Section 439(2) of the Code of Criminal Procedure filed on 17.05.2022 :

A N D

In Re : Amita Agarwal

..... Petitioner

Mr. Gaganjyot Singh
Mr. Rishav Kumar Singh
Mr. Biswajit Mal
Mr. Abhishek Bagal

... ... for the petitioner

Ms. Priyanka Agarwal

... ... for opposite party no. 2

Mr. Tanmoy Kr. Ghosh .. Id. Sr. Govt. Advocate
Ms. Sonali Bhar

... ... for the State

Petitioner has assailed order dated 20.01.2020 enlarging opposite party no.2 on bail.

Opposite party no.2 was married to the petitioner. It is alleged petitioner was subjected to torture over demands of dowry. Opposite party no.2 developed extramarital affair. When the petitioner protested, she was subjected to physical assault. Her *stridhan* articles were taken away. It is further alleged opposite party no.2 subjected the petitioner to unnatural sexual intercourse against her will.

Opposite party no.2 was arrested in connection with the case on 28.12.2019. He was remanded to police custody. *Stridhan* articles were recovered. Subsequently, he was released on bail.

Learned Advocate for the petitioner submits learned Magistrate failed to consider the seriousness of the allegations. Allegation of unnatural sexual intercourse is supported by medical evidence. All *stridhan* articles have not been recovered. Further

investigation with regard to forcible miscarriage is in progress. Hence, bail granted to opposite party no.2 may be cancelled.

Learned Advocate for the opposite party no.2 submits that the allegations of torture and unnatural sexual offence are out and out false. No contemporaneous complaint was lodged by the petitioner with regard to such incident. Allegation of torture resulting in miscarriage was not made in the FIR and is an afterthought. Opposite party no.2 cooperated with the investigation and *stridhan* articles were recovered. All offences are Magistrate triable and the order of bail does not suffer from perversity necessitating interference.

Learned Advocate for the State produces the case diary.

We have considered the materials on record. Statements of the petitioner/de-facto complainant recorded under Sections 161/164 of the Code of Criminal Procedure as well as that of her relations show she was subjected to torture at the matrimonial home. Her *stridhan* articles were misappropriated. Opposite party no.2 was arrested on 28.12.2019 and was remanded to police custody. During police custody, *stridhan* articles were recovered. Further detention for the purpose of recovery of *stridhan* articles, in our considered opinion, is not necessary.

It has been strenuously argued allegation of unnatural sexual intercourse is supported by medical documents.

We have perused the medical documents on record. Although petitioner alleged such unnatural sexual intercourse was against her will, it is relevant to note she did not inform of such cruel behaviour to her relations particularly her mother. Explanation offered in the FIR is that she kept quiet out of shame. Whether such explanation is plausible requires to be examined in the backdrop of the conduct of the petitioner in seeking medical treatment on one hand but

remaining quiet even to her close family relations on the other hand. These issues may be thrashed out in course of trial. That apart, offence under Section 377 of the Indian Penal Code is triable by a Magistrate.

In ***Satender Kumar Antil vs. Central Bureau of Investigation & Anr.***¹, the Apex Court held Magistrate has jurisdiction to grant bail in offences which are triable by Magistrate though punishable with life imprisonment.

Allegation of miscarriage due to torture was belatedly raised and does not find place in the FIR. Cancellation of bail on the strength of such belated accusation is unjustified.

In the light of the aforesaid discussion, we do not find any reason to set aside the order dated 20.01.2020 granting bail to the opposite party no.2 herein.

CRM (DB) 1366 of 2022 is thus disposed of.

Needless to mention observations made in this order are for the purpose of disposal of the application and shall not have any impact on the subsequent proceedings including further investigation.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)

¹ (2022) 10 SCC 51