

Mamta Nair vs The State Of Rajasthan on 12 July, 2021

Equivalent citations: AIR 2021 SUPREME COURT 3303, AIR ONLINE 2021 SC 326

Author: Chief Justice

Bench: Hrishikesh Roy, A.S. Bopanna, N.V. Ramana

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 586 OF 2021
(Arising out of SLP (Crl) No.3679 of 2021)

Mamta Nair

....Appellant(s)

Versus

State of Rajasthan & Anr.

... Respondent(s)

ORDER

Leave granted.

2. The instant appeal is assailing the order dated 01.12.2020 passed by the High Court of Judicature for Rajasthan, Bench at Jaipur in SB Criminal Miscellaneous Fourth Bail Application No.13680/2020. The appellant herein is the sister of respondent No. 2 and the wife of the deceased. Since it is alleged that the respondent No. 2 is the main conspirator in the crime leading to the killing of the husband of the appellant, the appellant is aggrieved by the order impugned whereunder the respondent No. 2 has been ordered to be enlarged on bail.

3. The issue relates to the complaint in FIR No. 235 of 2017 dated 17.05.2017 registered in the Police Station Karni Vihar for the offence under Sections 302, 452 and 120 B of the Indian Penal Code. The mother-in-law of the appellant Smt. Rama Devi Nair, who is also the mother of the deceased had lodged the said complaint. According to the complainant and the appellant herein, the husband of the appellant has been killed by the family members of the appellant as an honor killing since they had not agreed to the marriage between the deceased and the appellant. The further details relating to the incident need not be referred to herein since the allegations and the defence thereto is still open to be urged by the parties in the trial which is pending before the Sessions Court. Further, the limited aspect required in a matter relating to bail has already been taken note by this Court while disposing of an earlier Criminal Appeal No. 780 of 2018 relating to the same incident.

4. The grievance in the instant appeal is that the High Court without taking into consideration all these aspects of the matter has enlarged the respondent No. 2 on bail in a mechanical manner

through an order bereft of reasons.

5. In that background we have heard Ms. Indira Jaising, learned senior counsel for the appellant, Shri H.D. Thanvi, learned Government Advocate for the State of Rajasthan, Shri V.K. Shukla, learned senior counsel for respondent No. 2 and perused the impugned order as also the other material on record.

6. The impugned order dated 01.12.2020 in fact refers to the contention of the counsel for the respondent No. 2 herein that on an earlier instance this Court had cancelled the bail and thereafter the statement of witnesses has been recorded. The counsel for the respondent No. 2 referred to the evidence of the appellant herein and in that context sought for bail to release respondent No. 2. However, the High Court has not assigned any reason whatsoever except referring to the said contention. Be that as it may, as noted, an earlier order dated 03.11.2017 had been passed by the High Court enlarging the respondent No. 2, Mukesh Chaudhary on bail. The mother-in-law of the appellant herein Smt. Rama Devi Nair had assailed the said order. This Court while taking note of the fact situation and before concluding that the bail is to be cancelled has recorded as hereunder: “ The reading of the FIR and the charge sheet shows that prima facie there is material against the respondent No. 2 and in view of that, we are of the opinion that for the time being, it is not proper to extend the liberty of bail to the respondent No. 2. In view of the pendency of the trial, we are not inclined to go into the details of the case.”

7. The documents already taken note by this Court indicates that there is prima facie material against the respondent No. 2. Though the appellant herein, i.e., the wife of the deceased has been examined and a contention has been put forth with regard to her statement, it is not the evidence in its entirety and it is premature to conclude on the basis of a stray sentence. Further, merely classifying the appellant as the principal star witness and referring to her statement is of no consequence since the entire evidence will have to be assessed by the Sessions Court before arriving at a conclusion. If that be the position when this Court at an earlier instance had taken note of all aspects and had arrived at the conclusion that there is prima facie material against the respondent No. 2, the mere examination of the appellant herein cannot be considered as a change in circumstance for the High Court to consider the fourth bail application of the respondent No. 2 and enlarge him on bail.

8. In the above background, we are of the considered opinion that the order dated 01.12.2020 passed by the High Court of Judicature for Rajasthan, Bench at Jaipur, impugned herein is not sustainable. The same is accordingly set aside and the bail granted to respondent No. 2 is cancelled. We, therefore, direct the respondent No. 2—Mukesh Chaudhary to surrender before the Court of Upper District and Sessions Judge, Sr. No. 7, Jaipur City. We make it clear that we have not expressed any opinion on the merits of the case and the trial court shall consider the case being uninfluenced by any of the observations herein.

9. The High Court at the time of passing the impugned order has taken note that 17 witnesses out of 47 witnesses have been examined so far. It is not in dispute that at this point in time 21 witnesses have been examined and the trial is proceeding. Taking into consideration the nature of the offence,

it is appropriate that the trial be concluded at the earliest. The trial court shall therefore make all efforts to conclude the trial and dispose of the case as expeditiously as possible but in any event not later than one year from the date of receipt of a copy of this order.

10. The appeal is accordingly allowed.

11. Pending applications if any, shall stand disposed of.

.....CJI (N.V. RAMANA)J. (A.S. BOPANNA)J.
(HRISHIKESH ROY) New Delhi, July 12, 2021