

Rajasthan High Court

Bal Kishan vs State Of Rajasthan on 23 July, 1985

Equivalent citations: 1985 WLN UC 224

Author: V S Dave

Bench: V S Dave

JUDGMENT Vinod Shanker Dave, J.

1. This bail application Under Section 438 Cr. PC presents a sad tale of Mst. Chameli who lodged a report on June 19, 1985, alleging that her husband acts as a pimp and uses her for raising money and for this she is forced to share bed with those who can afford to purchase her flesh. She alleged, he has used her for nefarious activities ever since her marriage with him. She has named a number of persons in her statement which was recorded by City Magistrate, Alwar on June, 19, 1985, on being forwarded by the Superintendent of Police, Alwar. The FIR was recorded on the basis of the aforesaid statement which she gave on oath before the Magistrate which reveals the startling facts, the entire narration of which is not important for the decision of this bail application. But suffice it to say that lamenting, she narrated the details as to how she has been subjected to surrender herself for satisfying the lust, whim and wishes of several persons who could purchase her flesh. She went on to complain that her husband used to earn money through her and whenever she objected to surrender herself she was given beating. When it reached the climax she went to the Superintendent of Police, Alwar and narrated her sorrowful story on which, as mentioned aforesaid, her statements were recorded and the FIR taken down. A case was registered at police station Kotwali, Alwar for offence Under Section 376, 114 and 498A IPC.

2. In aforesaid report 8 persons have been named out of which 7 have been granted anticipatory bail by the learned Sessions Judge, Alwar, vide, order, dated July I, 1985, and two vide order, dated July 3, 1985. The learned Judge however rejected the bail of her husband who has moved the present application and this is how the matter has been brought to the notice of this Court.

3. It is submitted by the learned counsel for the petitioner that the case has been falsely foisted against his client because of one Suresh Punjabi who is in liason with his wife Mst. Chameli and in fact it is he who is, using her for earning money by black-mailing. It is alleged that Suresh Punjabi has taken certain nude photographs of his wife Chameli with 7 accused persons named in the report viz Sarva Shri M.L. Garg, Sardar Channi, V.K. Sharma, Harish Modi, Babu Lal Agarwal and Yogesh Mahavar and showed the same to him and threatened that in case he will raise his voice he will be killed. Thus it is submitted that the petitioner is, on the contrary, being tortured mentally and threatened physically as well. It is further submitted that according to her she been subjected to rape for last four years but she has never complained and this silence on her part shows that she was a willing party and the whole story has been subsequently made out. It is further submitted that a mere perusal of the FIR shows that the whole story is hollow and fake. It is further argued that since as many as 7 persons who had been named in the FIR and who had used Mst. Chameli for satisfying their lust for female flesh, have been -granted bail and his case falls on a better footing.

4. The learned Public Prosecutor has opposed the bail application and submitted that this is one of the serious cases where even the persons who have been granted anticipatory bail, ought not to have

been granted the same and made an oral prayer that notice be issued to those 7 persons as to why their bail should not be cancelled under the provisions of Section 439(2) Cr.P.C.

5. I have heard learned counsel for the parties and have given my earnest consideration to the facts of the case. I have also perused the orders and statement of prosecutrix.

6. The facts of this case are shocking. A bare perusal of the FIR discloses that how a lady of tender age is subjected to physical assaults on her body by several persons as her husband wanted to raise money. She has been made to move from pillar to post and has been sexually enjoyed by various prominent and monied persons of Alwar. She has categorically named certain persons in her statement and even according to the petitioner, her husband, she had sexual relations with them as he has himself seen her nude photographs with all these persons. This confirms what Mst. Chameli intended to say in her FIR. Taking the nude photographs of a lady by itself can, only be calculated to black-mail her or to surrender herself to the evil desires of those who could afford to purchase her flesh. Such conduct of the persons can by any standard be less than of vultures. The learned counsel for the petitioner submitted that at best the case under the Suppression of Immoral Traffic Act could be conceived of in the circumstances of the case. Suffice for me to reproduce the observations of Justice Krishana Iyer in Chetan, J. Vaswani and Anr v. State of West Bengal and Anr. wherein his Lordship speaking for the court said:

We are in the International Women's Year a circumstance meaningful socially, but not relevant legally. Even so, it is time to tighten up this statute and we may permit ourselves a few concluding observations, hopefully. May be there are other provisions of the Act which have contributed to its dismal failure in the field and the legislature must, in the International Year of Women, protect the virtue of the weaker sex from the purchasing power of the takers of virginity who sip every flower and change every hour.

No nation, with all its boasts, and all its hopes, can ever morally be clean till all its women are really free-free to live without sale of their young flesh lascivious wealth or commercialising their luscious figures India, to redeem this 'gender justice' and to prescribe prostitution whereby richmen buy poor wowed through houses of vice, has served its social conscience by enacting the Act. But the law is so ill-drafted and lacunoc that few who follow "the most ancient profession in the world" have been frightened into virtue and the customers of wine-cum-women are catered to respectably in bars, hotels and nightclubs in sophisticated and subtle ways, especially in our cities.

7. These accused persons have no better picture than pointed aforesaid. Such persons have to be dealt with stern hand. It is most unfortunate and regrettable that the learned Sessions Judge granted anticipatory bail to 7 accused persons in such a case by delivering a long order as if he was giving a final verdict after trial of the case. The whole approach of the learned Sessions Judge in the case, is, in my opinion perverse. He instead of taking a serious view of the matter has shown his scant respect for a lady who has been subjected to physical and mental torture and has been virtually made a prostitute. The learned Sessions Judge has not taken note of salutary principles in which the anticipatory bail has to be granted. While dealing with a case under Section 438 Cr.P.C. their Lordships in Pokar Ram v. State of Rajasthan and Ors. held:

Relevant consideration governing the court's decision in granting anticipatory bail under Section 438 are materially different from those when an application for bail by a person who is arrested in the course of investigation as also by person who is convicted and his appeal is pending before the higher court and bail is sought during the pendency of the appeal. These situations in which the question of granting or refusing to grant bail would arise, materially and substantially differ from each other and the relevant consideration on which the courts would exercise its discretion, one way or the other, are substantially different from each other.

Let it be made distinctly clear that status in life, affluence or otherwise, are hardly relevant considerations while examining the request for granting anticipatory bail. Anticipatory bail to some extent intrudes in the sphere of investigation of crime and the court must be cautious and circumspect in exercising such power of a discretionary nature. This case amply illustrates that the power was exercised sub-silentio as to reasons or on considerations irrelevant or not germane to the determination. This court, to avoid miscarriage of justice, must interfere.

8. Their Lordships cancelled the anticipatory bail granted. Judged in light of above, the provisions of anticipatory bail have been abused in this case by the learned Judge and I am constrained to say that this is one case where this court even on oral prayer of the learned counsel for the State, is inclined to issue notice.

9. As a result of the aforesaid discussion, I am firmly of the opinion that present is not a case where the provisions of anticipatory bail should come to the aid of persons who are indulged in such a socially condemnable act. Consequently I reject the application for anticipatory bail of Bal Kishan and simultaneously direct that a notice to show cause be issued to Yogesh Mahawar, Vijay Kumar son of Yogesh Chandra, Babulal son of Badri Prasad, Durga Prasad son of Kanhialal Jain, Ramesh Kalal, Lal Chand son of Chandu Lal Jain and Lakhpat Raj son of Kirorimal Mahajan as to why the order granting anticipatory bail to them be not cancelled. Notices shall be sent to the Superintendent of Police, Alwar with instructions that he should forthwith depute a responsible officer for getting the service of notices effected on the aforesaid seven persons by taking details from the police diary and their anticipatory bail applications. Notices may be made returnable within 10 days.