Md. Naimul Haque Ansari @ Naimul Haque ... vs The State Of Bihar [Alongwith Cr. Misc. ... on 11 May, 2006

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Bench: Navin Sinha

JUDGMENT

Navin Sinha, J.

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1. Heard learned Counsels for the petitioners and the learned APP for the State.

2. The petitioners in these three applications are the husbands of the respective complainants, in custody, in complaint cases instituted under Sections 498A and 323, 379 and 406 of the Penal Code variously and Sections 3 & 4 of the Dowry Prohibition Act.

3. The allegations in the first case is that dowry was paid during marriage. From day one the complainant was harassed in various ways. She was beaten up and denied food. The accused did not behave properly with her and subjected her to harassment both physically and mentally for dowry. She was left alone at the bus stand. The allegation in the second case is that after the marriage dowry was demanded and paid. Further demands were made. The complainant was beaten and chased away from the matrimonial home. Her father was abused and they were pushed around. The accusation in the third case is that dowry was paid during the marriage. Demands for further dowry were made. The complainant after the marriage discovered that her husband was already married. On objection by her, further dowry was demanded and she was assaulted.

4. The petitioner in Cr. Misc. No. 13402 of 2006 is in custody since 15.2.2006. The petitioner in Cr. Misc. No. 13505 of 2006 is in custody since 29.1.2006 and the petitioner in Cr. Misc. No. 13614/2006 is in custody since 8.9.2005.

5. These three applications arise from three different districts of Bihar, Jehanabad, Banka and Vaishali. The bail applications have been rejected by the Court of the Magistrate and the Sessions Court.

6. The Courts below in all the three applications have similarly reasoned that the petitioners were the husbands. Cognizance had been taken after enquiry and that the applications of the petitioners for anticipatory bail had been rejected by the High Court.

7. The law with regard to grant or rejection of bail stands well settled now. This Court will only refer to a Supreme Court judgment (Ram Govind Uppadhyay v. Sudarshan Singh and Ors.) at para 3 holding that grant of bail is a discretionary matter calling for its exercise in a judicious manner. The nature of the offence is one of the basic considerations apart from others. The more heinous the offence, the greater the chance of rejection depending on the facts of a case. Further the Supreme Court in (Prahlad Singh Bhati v. NCT Delhi and Anr.) has held that it was only appropriate that in Sessions triable cases, the grant of bail be considered by the Sessions Court (Section 439) and not by the Magistrate (Section 437) The allegations under Section 323 is bailable. While Sections 379,406 and 498A are non-bailable. The allegations conmstituting non-bailable offences in my opinion cannot be said to be grave or heinous as the offences under all the sections is triable by a Magistrate.

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8. Section 436 of the Code of Criminal Procedure deals with the powers of the Magistrate for grant of bail where offences are bailable. Section 437 of the Code deals with the powers of the Magistrate to grant of bail in non-bailable offences. It provides that where a person accused of a non-bailable offence is arrested or detained and is brought before a court other than a High Court or a Court of Sessions, he may be released on bail, but he may not be released on bail if he is guilty of an offence punishable with death or imprisonment for life, if in a cognizable offence he has been previously convicted of an offence punishable with death/imprisonment for life/imprisonment for seven years or more/previously convicted on two or more occasions of a nonbailable and cognizable offence. Section 439 deals with the powers of the Sessions Court as also the High Court to grant bail. A bare comparative perusal of Sections 437 and 439 of the Code makes it apparent that generally the Code contemplates grant of bail to the accused by the Magistrate for offences other than limited by Section 437(1) of the Code. The restrictions on the power of the Magistrate to grant bail are lifted by Section 439 of the Code which contemplates grant of bail by the superior courts in serious offences. The intention of the legislature therefore is that cases not falling under the exceptions of Section 437(1) of the Code be given a quietus at the stage of Section 437 of the Code, unless any special circumstances so warrant.

9. A Bench decision of the Jharkhand High Court reported in 2001(3) BLJ 373 (Birendra Jha @ Virendra Jha v. State of Jharkhand) can be usefully referred to in the present factual situation under consideration. This Court considers it appropriate to quote paragraph 3 of the judgment in extenso.

3. On the question of grant of bail to accused I may also observe that there is another category of offence where normally bail should be granted and refusal should be an exception. I aw talking of offences under Section 498-A I.P.C. and Section 4 of the Dowry Prohibition Act, 1961. My experience has shown me that invariably in almost all cases relating to the alleged commission of the aforesaid offences, whether lodged on police report or through a private complaint, the accused are denied bail. Just because the police report of the private complaint carries with it the label of Section 498-A I.P.C. or Section 4 of the Dowry Prohibition Act, 1961, does not mean that the bail should be denied to the accused. In relation to the aforesaid offences only if a Court finds that there are very serious allegations against the accused, his involvement and implicity in the commission of offences being directly linked with the facts alleged and either it is a very blatant and serious

demand of dowry, or if the offence relates to Section 498-A I.P.C., there are serious allegations supported with clear proof, that indeed physical injury has been inflicted upon the alleged victim, only in these cases, rejection of the bail may be resorted to, and its grant should be an exception. Of course, in those cases where it is manifestly clear, on a plain reading of the police report or the contents of the private complaint that neither any grievous injury has been inflicted upon the alleged victim nor is there any other clear proof of the alleged victim having physically suffered and that there is also no serious allegation supported with positive proof of dowry having been demanded in the immediate proximity of the marriage or thereabout, the bail should be granted. It happens quite often that in ordinary matrimonial disputes or where there is some discordant note in a matrimonial relationship, the women as an alleged victim sets in motion the machinery of Page 1258 law by invoking Section 498-A I.P.C. or Section 4 of the Dowry Prohibition Act, 1961, The Courts should, therefore, be circumspect are careful, while considering the question of grant or refusal of bail, to find out whether there are indeed genuine and serious allegations and only then, if it does find that such allegations exist and are clearly made out, should bail be refused to the accused persons. Similarly, while considering the request of the accused persons for bail in such cases the Court should also find out whether a particular accused had any role to play in the transaction or in the occurrence and whether, in the background of the facts and circumstances, there are any probabilities of his having played such a role, regard being had to the relationship of such an accused with the main parties, such as the husband, or the in-laws of the alleged victim. While considering all such aspects with relation to the question whether to refuse bail or to grant bail, the Courts, therefore, should be very careful in also assessing with reference to the contents of the police report or the complaint, the nature of the allegation made, the supporting proof and documents etc. to find out whether the prosecution, the de facto complainant or the informant are trying to unnecessarily harass the accused and jeopardize their interest and if in fact, there are grounds to believe that an offence has been committed. It is only in the latter case that the bail may be refused. In farmer case, the grant of bail should be a rule.

10. In the present cases, none of the petitioners fall within the exceptions enumerated in Section 437(1) of the Code. The allegations as noticed above are neither grievous nor heinous. The are triable by a Magistrate. The normal rule adopted by the Courts is of bail and not jail. Even if the Magistrate taking cognizance did not grant bail to the petitioners this Court finds it difficult to appreciate as to why the Sessions Court did not grant bail compelling the petitioners to approach the High Court. Merely because cognizance had been taken or that anticipatory bail applications of the petitioners were rejected by this Court, the same cannot be a ground to reject an application for bail. The considerations for the two are entirely different.

11. This Court is compelled to observe that it is cases of the present nature which are imposing an unreasonable and what is proving to be an unmanageable burden of bail matters on this Court. The figures supplied by the Registry as of today informs this Court that upto the 11th May 2006 nearly 20,000 regular bail applications have already been filed in the High Court. Of the same as of today 6685 applications are running on the cause list. Several Benches of the High Court are only hearing applications for regular bail.

12. This Court is further constrained to observe that in several cases of Matrimonial disputes, the husband and wife having resolved their disputes started to reside together, the husband having been released on bail, yet the Magistrate and the Sessions Court have rejected the anticipatory bail applications of the family members of the husband observing that the revival of the matrimonial harmony was a very good ground for regular bail. This Court is constrained to record that such orders are mechanical and display complete non-application of mind bordering on abdication of duties. The only effect of the order would be possible revival of matrimonial disharmony, and counter productive.

13. This Court is compelled to take note of the aforesaid facts which if attended to will substantially reduce the burden of bail applications in the High Court. This Court Page 1259 is satisfied that cases such as the present need not have come to this Court and burdened it board of bail matters unnecessarily. Applications such as these should be given a quietus either before the Magistrate or at best before the Sessions Court. The above principles could equally apply to what are civil disputes.

14. The Supreme Court in 2003 (4) SCC 675 while taking note of the fact that prosecutions non-compoundable in laws cannot be quashed under Section 482 Cr.P.C. has yet laid down the law that in matters under Section 498A of the Penal Code, the approach should be different.

15. This Court can further take notice of the fact that Section 498A of the Penal Code has been made bailable in the State of Andhra Pradesh. But then that is a question of Legislation.

16. Having considered the nature of the allegations in the present applications and the period of custody undergone by the petitioners, let them be enlarged on bail on furnishing bail bonds of Rs. 10.000/- with two sureties of the like amount each to the satisfaction of the SDJM Jehanabad in Complaint Case No. 547/2004, SDJM Banka in Complaint Case No. 46/2005 and CJM Vaishali at Hajipur in Complaint Case No. 3596/2004 respectively.

17. Let a copy of this order be forwarded to all the Sessions Judges for onward circulation.