

Jagan Nath vs State Of Haryana And Anr. on 21 November, 1994

Equivalent citations: I(1996)DMC110

JUDGMENT

V.K. Jhanji, J.

1. This order of mine shall dispose of Criminal Misc. Nos. 15164-M of 1994 and 16903-M of 1994. Both these petitions have been filed under Section 439(2) Cr.P.C. for cancellation of bail granted to respondent No. 2 (in both cases), namely Tarsem Lal and Bimla Devi, brother-in-law and mother-in-law respectively, of deceased, Veena Rani, by the order passed by the Sessions Judge, Sirsa, on 28.9.1994 and 4.10.1994 respectively.

2. According to the F.I.R. which was lodged on the statement of Jagan Nath, father of deceased, Veena Rani, her daughter. Veena Rani, was married two years ago with Sham Lal son of Jagan Nath at Sirsa. At the time of marriage of Veena Rani, he incurred expenditure more than he could afford. After marriage, he got an impression that his daughter was not being looked after properly and being harassed. On 10.9.1994 at about 12 a.m., he got a phone call from his daughter, Veena Rani, and on phone, she hurriedly told him that she is in great trouble. He (Jagan Nath) and his father, Walaiti Ram, reached the house of in-laws of Veena Rani at about 10/11 a.m. on 11.9.1994. They talked to the in-laws of Veena Rani and at that time, Tarsem Lal, elder brother of Veena Rani's husband, mother-in-law of Veena Rani, Veena Rani's husband, Sham Lal, and their partner, Ganga Ram, including other members of the family, were present. He enquired from them as to why they were harassing his daughter, but they while talking started using hot words, where after he told them that he will take his daughter with him. However, they did not agree and Ganga Ram told him to wait for some days and come again for having a talk on this subject and, therefore, the in-laws told him to meet on 25.9.1994. At that time, Veena Rani took him aside and told that her husband is having illicit relations with the wife of Tarsem Lal (his brother) and whenever she asked her husband to desist from this, they used to beat her and it is possible that they would kill her. He and his father, Walaiti Ram, consoled her and told that they would again be coming on 25.9.1994 to settle the matter. On 21.9.1994 at about 6/6.30 a.m., one Phirangi Lal informed him that his daughter, Veena Rani, was lying admitted in Civil Hospital, Sirsa. He alongwith his wife, father and other friends and relations went to Civil Hospital, Sirsa, but on reaching there, they learnt that Veena Rani had died. In the F.I.R. it has further been mentioned that "my daughter, Veena was being harassed/compelled to bring more dowry. I tried to satisfy their demand many times by making cash payment but they continued making the demands but I could not fulfil the same. My daughter has been burnt alive by Sham Lal, Tarsem Lal and their mother by putting kerosene oil on Veena for the reason that Veena was not able to meet their demand of more dowry and also asking her husband to desist from having illicit relations with wife of Tarsem Lal". On registration of the F.I.R., Sham Lal was arrested on 24.9.1994, whereas Tarsem Lal was arrested on 26.9.1994, but vide order dated 28.9.1994, Tarsem Lal was allowed bail. Bimla Devi, mother-in-law of Veena Rani,

deceased, who was stated to be admitted in Hospital, was arrested on 2.10.1994, in the Hospital itself, but later on, vide order dated 4.10.1994 Bimla Devi was also released on bail, when she was still in Hospital.

3. The contention of learned Counsel for the petitioner is that there is a case where First Information Report was lodged without any delay and the accused were not only named in the F.I.R., but it has also been specifically alleged in the F.I.R. that Veena Rani has been burnt alive by Sham Lal, Tarsem Lal and their mother by putting kerosene oil on Veena Rani because she was not able to meet their demands of more dowry and also due to the fact that she had been asking her husband to desist from having illicit relationship with her brother's wife. Counsel further contended that for the purposes of looking into the bail application, allegations in the F.I.R. have to be taken to be established true and moreover, the learned Sessions Judge acted in great haste and granted bail to Tarsem Lal and Bimla Devi without waiting for the outcome of the investigation. According to the Counsel, the statements of witnesses recorded under Section 161 Cr.P.C. and even the supplementary statement of Jagan Nath, in which allegations have been levelled against all accused persons, were not gone into by the Sessions Judge. Tarsem Lal has started interfering with the fair investigation of the case by actively winning over the Police Officers concerned and the accused persons who are residents of Sirsa, are influential persons. Further, according to the Counsel, Tarsem Lal and Bimla Devi are the main culprits in murder of Veena Rani. Mr. S.S. Goripuria, AAG Haryana, appearing for State, states that even though the State has not applied for cancellation of bail granted to these two accused, but the State does require the custody of these persons for the purpose of investigation. Mr. R.S. Cheema, Sr. Advocate, Counsel for Tarsem Lal, and Mr. Deepak Sibal and Ms. Nirmaljit Kaur, Advocates, for Bimla Devi, have contended that once in exercise of the discretion, bail had been granted by the Trial Court, this Court can interfere only if the case can be brought in one or more recognised category of cases in which bail granted can be cancelled. Mr. Deepak Sibal, Advocate, has placed reliance upon judgments in *Aslam Babalal Desai v. State of Maharashtra*, AIR 1993 S.C. 1, *Mohinder Singh v. Satnam Singh @ Satta and Anr.*, 1992(2) R.C.R. 192 = II (1992) CCR 2141, *Harjit Singh v. Jagdish Singh*, 1992(2) R.C.R. 396, and *Ramesh Bhandari v. Charan Dass Puri and Ors.*, 1993(2) R.C.R. 195 = 1 (1993) DMC 296. Mr. Sibal has read in extenso the F.I.R. and contended that the primary allegation of the complainant is with regard to alleged illicit relationship between Sham Lal, co-accused and the wife of Tarsem Lal. Involvement of Bimla Devi in this case is as a result of malice. He further contended that in *Aslam Babalal Desai's* case (supra), it has been held by the Apex Court that rejection of bail stands on one footing but cancellation of bail is a harsh order because it interferes with the liberty of the individual and hence, it must not be lightly resorted to, and bail can be cancelled where, (i) the accused misuses his liberty by indulging in similar criminal activity; (ii) interferes with the course of investigation; (iii) attempts to tamper with evidence of witnesses, (iv) threatens witnesses or indulges in similar activities which would hamper smooth investigation; (v) there is likelihood of his fleeing to another country; (vi) attempts to make himself scarce by going underground or become unavailable to the Investigating Agency; (vii) attempts to place himself beyond the reach of his surety etc. These grounds are illustrative and not exhaustive. In *Mohinder Singh's* and *Harjit Singh's* cases (supra), Single Bench judgments of this Court, it has been held that bail can be cancelled in case the accused has misused the concession of bail by tampering with the evidence or threatened the witnesses in such a manner that it would prejudice the trial of the case. In *Ramesh Bhandari's* case (supra), a Single Bench

judgment of this Court, bail was granted in dowry death case. In this case, when the inquest proceedings were conducted by Sub-Divisional Magistrate, relations of deceased therein did not state that bride was harassed, but in subsequent statements made by them before the S.H.O., they stated that the deceased was harassed for not bringing sufficient dowry. The judgment in Master Hari Singh v. State of Haryana, 1994(2) R.C.R. 4, rendered by a Division Bench of this Court, was cited for the proposition that bail cannot be withheld as a measure of punishment, but is granted mainly with the object of seeing that the accused stands trial and does not hamper either investigation or the enquiry. There can be no dispute with the broad principle enumerated in the judgments cited by Counsel for the respondent but it cannot be taken to mean that in no case, can the High Court interfere where bail has been granted by a Subordinate Court in exercise of its discretion. As and when the High Court is considering the prayer for cancellation of bail, it has the jurisdiction to see whether the Subordinate Court has granted bail in contravention of the well-known factors which are required to be taken into account, and if the High Court finds that the Subordinate Court has failed to exercise its discretion according to law, then it may not be necessary for the High Court to see whether the case falls in the categories as enumerated by the Apex Court in Aslant Babalal Desai's case (supra). The learned Sessions Judge in his order dated 28.9.1994, in the case of Tarsem Lal, though recorded that "the fact remains that this poor girl had died an un-natural death within two years of her marriage and this death had taken place in the house of her in-laws in Sirsa", yet allowed bail to Tarsem Lal on the ground that the case of Tarsem Lal stands on a different footing than that of his brother, Sham Lal. The grounds which prevailed upon the learned Sessions Judge were, that, (i) Tarsem Lal stands remanded to judicial custody; (ii) is no longer required either for interrogation or for effecting any recovery; (iii) challan is not likely to be submitted early; and (iv) trial will take considerable time. As regards, Bimla Devi, bail was allowed to her on the premises that since concession of bail has already been given to Tarsem Lal, similar concession is also to be given to her.

4. Having heard the learned Counsel for the parties, I am of the view that in the facts of the present case, the consideration which prevailed upon the learned. Sessions Judge, make out no case for bail. A reading of the F.I.R. shows that Sham Lal, Tarsem Lal and Bimla Devi have not only been named, but it has also been alleged that Veena Rani has been burnt alive by all of them by putting kerosene oil on her, for the reason that she was not able to fulfil their demand of more dowry. I find no merit in the argument of Counsel for the respondent that the primary allegation of the complainant is with regard to illicit relationship between Sham Lal and wife of Tarsem Lal, brother of Sham Lal. This allegation cannot be read in isolation, and it has to be read alongwith other circumstances, such as, demand of dowry made by the respondents and also by the husband of Veena Rani, deceased. The State has placed on record report dated 10.11.1994 of Dy. Superintendent of Police, Vigilance Department (Crime Branch), Hissar, in which he has stated that initially, investigation of the case was made by Daya Nand, Sub-Inspector, Police Station, Sirsa, but on 10.10.1994, the case file was entrusted to Vigilance Department for further investigation by Crime Branch, Hissar. The Crime Branch recorded the statement of complainant, Jagan Nath, his father, Walaiti Ram and Smt. Kaushalya Devi wife of Jagan Nath, residents of Ludhiana. In their statements, it has been revealed that after the marriage of Veena Rani, draft of Rs. 90,000/- F.D. etc., alongwith Rs. 1.25 lacs in cash, were given to in-laws of Veena Rani. This has been got verified from the Banks at Ludhiana and Sirsa. Drafts worth Rs. 70,000/- issued by the Ludhiana Banks in the name of Veena, were found to

have been deposited in the UCO Bank, Sirsa, in the account of Veena Rani. I myself have seen the copy of statement of account. A sum of Rs. 40,000/- was deposited on 1.9.1992 by way of two drafts of Rs. 20,000/- each, and another sum of Rs. 30,000/- was deposited on 9.9.1992, and on the same day Rs. 40,000/- was withdrawn, i.e. on 9.9.1992, whereas Rs. 30,000/- were withdrawn on 10.9.1992. The Dy. Supdt. of Police aforesaid, in his report has further stated that sum of Rs. 1.25 lacs has been found to have been withdrawn from the account of Jagan Nath of Ludhiana from the Bank account operated by him, and payment of this amount of Rs. 1.25 lacs was made to in-laws of Veena, and so, from the investigation, payment of Rs. two lacs been found to have been made after marriage to Veena and her in-laws at Sirsa. He has further mentioned that though ration-cards are in the name of Sham Lal, Ajay Kumar, Tarsem Chand and Jagan Nath, but they all are residing in one house, and one person used to get ration of all these ration-cards. In this regard, one Ranjha Ram has made a written report. He has thus, concluded that there is a joint family and all reside together. The contention of Counsel that the entire family has been roped in, is also not acceptable for the reason that Ajay Kumar, brother of Sham Lal who is also residing in the same very house alongwith his wife, and also the wife of Tarsem Lal, have not been named in the F.I.R. The learned Sessions Judge has failed to take into consideration that it was a grave matter pertaining to alleged dowry death. The deceased had died within two years of her marriage and the death took place in her in-laws' house. The deceased had burn injuries and in that condition, she was found dead in her matrimonial home. In these circumstances, due weight was required to be given to the provisions of Sections 113A and 113B of the Indian Evidence Act, 1872, which provides as under:

"113A. Presumption as to abetment of suicide by a married woman.- When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she has committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband".

"113B. Presumption as to dowry death. - When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death, such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death".

According to the F.I.R. and the statements of the father and grandfather, of deceased, Veena Rani, and also other witnesses, recorded by the police under Section 161 Cr.P.C, it appears that respondents used to harass her in connection with the dowry and Veena Rani died due to burn injuries in the house of her in- laws. After the marriage, a sum of Rs. 70,000/- was deposited in the account of Veena Rani, which was got withdrawn after a few days of deposit. Jagan Nath, father of Veena Rani, deceased, had withdrawn sum of Rs. 1.25 lacs from his account at Ludhiana and the investigation conducted by the Crime Branch has revealed that this amount was given to the in-laws of Veena Rani after marriage. The investigation conducted so far points out that the deceased was either burnt in connection with demand for more dowry or she committed suicide on being tortured

by her in-laws. Thus having regard to the seriousness, nature and character of evidence, and also to the fact that the un-natural death of Veena Rani had taken place in the house of the respondents, I am of the view that the learned Sessions judge has not exercised his discretion properly in releasing the respondents on bail.

5. Accordingly, both the petitions, i.e. Crl. Misc. Nos. 15164-M of 1994 and 16903-M of 1994, are allowed, and the bail granted to the respondents, Tarsem Lal and Bimla Devi, vide orders dated 28.9.1994 and 4.10.1994 respectively, by the Sessions Judge, Sirsa, shall stand cancelled. It is, therefore, ordered that the respondents be committed to custody.