

Krishan Murari Agrawal vs State Of Rajasthan Through Pp on 20 March, 2012

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR

JUDGMENT

KRISHAN MURARI AGRAWAL VS. STATE OF RAJASTHAN

S.B. Criminal Misc. 2nd Bail Application No. 1091 of 2012 under section 439 Cr.P.C. in F

Date of Order : March 20, 2012

PRESENT

HONBLE MR. JUSTICE MAHESH CHANDRA SHARMA

Mr. Madhav Mitra , for the petitioner
Mr. Peeyush Kumar, PP for the State
Mr. Suresh Sahani, for the complainant.

REPORTABLE BY THE COURT :

This criminal misc. 2nd Bail Application under section 439 Cr.P.C. has been filed by the petitioner in FIR No. 163 of 2011 registered at Police Station Moti Dungari, Jaipur for offence under sections 498 A, 304 B IPC and against the order dated 9.1.2012 passed by Special Judge, Women Atrocity and Dowry Cases Jaipur in Criminal Case No. 09/2012 by which the bail application of the petitioner was rejected.

2. The first bail application of the petitioner was rejected by the Co-ordinate Bench of this Court on 14.10.2011. After filing of the challan, the petitioner filed second bail application before the Special Judge, Women Atrocities and Dowry Cases, Jaipur for bail. The Special Judge after considering the material available on record, rejected the bail application of the petitioner vide his order dated 9.1.2012. Hence this second bail application has been filed.

3. The learned counsel for the petitioner has argued that the the petitioner is innocent and has nothing to do with the present crime. Kamna set herself on fire in the intervening night of 27.8.2011

28.11.2011 at about 2:30 a.m. On the request of police personnel her statement was recorded which find place in the challan paper at internal page 41 according her statement she has not alleged any incriminating allegation against the petitioner. It is stated by the counsel for the petitioner that before recording of this statement the Police has asked SDM, CJM as well as Medical Officer of Sawai Man Singh Hospital, Jaipur, Duty Doctor for recording the statement. The learned counsel further stated that the attending doctor certified that the deceased was in the condition wherein statement could have been recorded. In relation to recording of statement before Magistrate the learned counsel has stated that every endeavour was made but none appeared for recording the statement. It was argued that the statement recorded by the investigating agency is fully legal and acceptable by all legal parameters. It is further argued that the father- in- law the petitioner has not been alleged for any offence whatsoever and it was prayed that he be released on bail. The learned counsel has further argued that the basic dispute between the couple was with regard to one girl named Shalu Kumawat who is said to have been known to petitioner's son Yogesh @ Lucky Agrawal which was the main cause of perturbation for the deceased.

4. Mr. Peeyush Kumar, PP appearing for the State and Mr. Shahni, appearing for the complainant have argued that the Special Judge while rejecting the bail application filed after challan and before challan has categorically denied bail to the petitioner as the allegations have been levelled against him for harassing the girl and demanding money and killing her by pouring petrol. The investigation against Pushpa is still pending under section 173(8) Cr.P.C. as still she is absconding. In these circumstances it was prayed that the petitioner is not entitled for any bail at this stage as the serious allegations of dowry death have been levelled against the petitioner for the death of Kamna.

5. I have heard Mr. Madhav Mitra, learned counsel for the petitioner and Mr. Peeyush Kumar, Public Prosecutor for the State and Mr. Shahni, counsel appearing for the complainant and also perused the order of the Special Judge rejecting the bail and the material placed on record of this second bail application after filing of the challan.

6. The Special Judge Women Atrocities and Dowry Cases while rejecting the bail application of the petitioner on 19.9.2011 observed as under :

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7. The co-ordinate Bench passed the following order rejecting the bail application :

Heard learned counsel for the parties.

On having considered the over all facts and circumstances of the case, as revealed from the case diary perused by this Court, that the marriage of the deceased had taken place on 12.2.2011 and she died on account of 90% burn on 28.8.2011 as well as the seriousness of the allegation and the fact that the investigation in the case is still pending, I do not find any just reason to enlarge the petitioner on bail.

Consequently the bail application is dismissed.

8. While rejecting the second bail application, the Special Judge, in its order observed as under :

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9. On having considered the over all facts and circumstances of the case, as revealed from challan papers, orders of the Special Judge passed on the first bail application and the second bail application and order of the Co-ordinate Bench of this Court quoted above and further material available on record and the fact that the marriage of the deceased had taken place on 12.2.2011 and she died on account of 90% burn on 28.8.2011 as well as the seriousness of the allegation and the fact that the investigation in the case is still pending against Smt. Pushpa under section 173(8) Cr.P.C. as she is absconding, I do not find any just reason to enlarge the petitioner on bail at this stage.

9. For the reasons mentioned above, this second bail application filed by the petitioner at this stage is rejected. The trial court is directed to expedite the trial.

(M.C. SHARMA)J. OPPareek/ All corrections made in the judgment/order have been incorporated in the judgment/ order being emailed (O P Pareek) PS-cum JW