

Smt. Meghna Agarwal vs Smt. Manju Bagadiya on 19 April, 2022

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Bench: Gurpal Singh Ahluwalia

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THE HIGH COURT OF MADHYA PRADESH

M.Cr.C. No.4200/2022

Smt. Meghna Agarwal Vs. Smt. Manju Bagadiya and others

Gwalior, Dated:19/04/2022

Shri Imran Khan, Advocate for applicant.

Shri S.K. Shrivastava, Advocate for respondent no.1.

Shri C.P. Singh, Panel Lawyer for respondent No.3/State. This application under Section 439 (2) of Cr.P.C. has been filed for cancellation of bail granted to the respondents no.1 and 2 by order dated 29/9/2021 passed by First Additional Sessions Judge, Ganj Basoda, District Vidisha in Bail Application No.402/2021.

2. The necessary facts for disposal of the present application in short are that the complainant/applicant has lodged an FIR against the respondents no.1 and 2 and her husband on the allegations that she got married to the co-accused Anurag Bagadiya on 20/1/2020 as per Hindu rites and rituals. An amount of Rs.20,21,000/- in cash, diamond jewelry, silver utensils etc. were given in dowry. She was kept properly for few days after her marriage, but thereafter respondents no.1 and 2 and her husband started harassing her on the ground that the applicant/complainant is the only daughter of her father and her father is a big food grain merchant, therefore, she should bring an Audi car and an amount of Rs.50,00,000/- and only then they would keep her properly in her matrimonial house. For demand of dowry the respondents no.1 and 2 and her husband- Anurag Bagadiya started harassing her physically and mentally. When she refused to bring additional dowry, then she was beaten by her husband-Anurag Bagadiya and respondent no.1-Smt. Manju THE HIGH COURT OF MADHYA PRADESH Smt. Meghna Agarwal Vs. Smt. Manju Bagadiya and others Bagadiya. In order to save the pride of her parents, she was silently tolerating the physical and mental harassment and did not narrate the incident to her parents. It was further alleged that her husband was regularly asking for indulging in unnatural sex. On 5/8/2020 her husband came to her parental home to attend the death rituals of her grandmother and both were staying in one room, where her husband committed unnatural sex with her. When she objected to it, then she was threatened by her husband that in case if this fact is narrated to anybody, then he would kill her. In order to protect the pride of the family as well as on account of threat to her life, she did not narrate the incident to anybody and after sometime she went to her matrimonial house. Again in the matrimonial home at Katni she was treated like servant. When respondents no.1 and 2 came to know about the unnatural sex done by her husband, then they said that the applicant has to live as per the wishes of her husband and she is under obligation to accept all the demands of her husband,

otherwise she would continue to suffer beating. Her in-laws have kept all her jewelry and money and ousted her from her matrimonial home on 16/11/2020. Under a belief that everything would improve, she did not lodge the report, but now on 21/9/2021 she has narrated the entire incident to her mother and accordingly, an FIR was lodged.

3. The respondents no.1 and 2 filed an application under Section 438 of Cr.P.C. It appears that the applicant also filed her objection to the application.

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4. The Court below by the impugned order has granted anticipatory bail to the respondents no.1 and 2 after considering the fact that the allegations of committing unnatural sex is against her husband and the only allegation against the respondents no.1 and 2 is that when the applicant disclosed the fact of unnatural sex to respondents no.1 and 2, then they simply replied that the applicant has to live as per the wishes of her husband. Thus, it was observed that the main allegation against the respondents no.1 and 2 is with regard to physical and mental harassment on account of demand of dowry and it was also observed that it appears that the prosecution has not followed the law laid down by the Supreme Court in the case of Arnesk Kumar Vs. State of Bihar reported in (2014) 8 SCC 273 as well as Section 41A of Cr.P.C. and granted anticipatory bail to the respondents no.1 and 2.

5. Challenging the order passed by the Court below, it is submitted by the counsel for the applicant that since the respondents no.1 and 2 had refused to take cognizance of the act of unnatural sex by her husband, therefore, it is clear that the unnatural sex was committed by her husband with the consent and knowledge of respondents no.1 and 2.

6. Per contra, the application is vehemently opposed by the counsel for the State.

7. It is fairly conceded by the counsel for the applicant that there is nothing on record to show that the husband of the complainant was THE HIGH COURT OF MADHYA PRADESH Smt. Meghna Agarwal Vs. Smt. Manju Bagadiya and others sharing his bedroom activities with his parents. The Supreme Court in the case of Jagjeet Singh and Others Vs. Ashish Mishra @ Monu and another by order dated 18/4/2022 passed in Cr.A. No.632/2022 has held that the Court should refrain from evaluating or undertaking a detailed assessment of evidence, as the same is not a relevant consideration at the threshold stage. However, the Court may examine the prima facie issue including any reasonable grounds whether the accused committed an offence or the severity of the offence itself, but an extensive consideration of merits which has the potential to prejudice either the case of the prosecution or the defence, is undesirable.

8. If the reasons assigned by the Court below are considered, then it is clear that the Court below has applied its mind to the effect as to whether the allegations made under Section 377 of IPC are prima facie made out against the respondents no.1 and 2 or not. Even otherwise, during the course of arguments, the counsel for the applicant could not point out anything from the record to show that the offence of unnatural sex was committed by her husband with due knowledge and instigation by

the respondents no.1 and 2. The parents-in-laws of the complainant may be or may not be responsible for the bedroom activities of her husband, but in order to make them prima facie responsible there must be some specific allegation that the bedroom activities was committed with the knowledge and instigation of the parents-in-laws. Under these circumstances, this THE HIGH COURT OF MADHYA PRADESH Smt. Meghna Agarwal Vs. Smt. Manju Bagadiya and others Court is of the considered opinion that the observation made by the Court below that prima facie offence under Section 377 of IPC is made out, does not amount to evaluating or assessing the evidence in detail. So far as the allegations of physical and mental harassment on account of demand of dowry is concerned, the counsel for the applicant could not point out as to how the observations made by the Court below with regard to non-compliance of the guidelines issued by the Supreme Court in the case of Arnesh Kumar (supra) is bad.

9. At this stage, it is submitted by the counsel for the applicant that had a notice under Section 41A of Cr.P.C. was issued to the respondents no.1 and 2, then they would have been required to file an application for grant of regular bail at the time of filing of charge- sheet. Therefore, the unlimited anticipatory bail granted by the Court below is unwarranted. In support of his contention, the counsel for the applicant has relied upon the judgment passed by the Supreme Court in the case of Sushila Aggarwal and others Vs. State (NCT of Delhi) and another reported in (2020) 5 SCC 1.

10. Considering the totality of the facts and circumstances of this case as well as in the light of the judgment passed by the Supreme Court in the case of Sushila Aggarwal (supra) wherein it has been held that under certain facts and circumstances of the case, the Court can grant anticipatory bail for a limited period, the order dated 29/9/2021 passed by First Additional Sessions Judge, Ganj Basoda, District Vidisha in Bail Application No.402/2021 is hereby modified.

THE HIGH COURT OF MADHYA PRADESH Smt. Meghna Agarwal Vs. Smt. Manju Bagadiya and others While upholding anticipatory bail granted to respondents no.1 and 2, it is directed that it shall remain in force till filing of the charge-sheet. On the day when the charge-sheet is filed, respondents no.1 and 2 shall be required to file an application for grant of regular bail, which shall be considered afresh without getting influenced or prejudiced by any of the observations made by this Court or by the Court below while granting anticipatory bail to the respondents no.1 and 2, as the observations have been made at a stage where the investigation itself is incomplete.

11. With aforesaid modification, the application is finally disposed of.

(G.S. Ahluwalia) Judge Arun* ARUN KUMAR MISHRA 2022.04.21 14:28:23 +05'30'