

Damodar Sharma vs The State Of Madhya Pradesh on 21 December, 2018

Equivalent citations: AIRONLINE 2018 MP 1375

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The High Court Of Madhya Pradesh
MCRC-51574-2018
(DAMODAR SHARMA Vs THE STATE OF MADHYA PRADESH)

MCRC-51574-2018

Gwalior, Dated : 21-12-2018

Shri R.K. Sharma, Senior Advocate with Shri M.K. Chaudhary,

Counsel for the applicant.

Shri J.M. Sahni, Public Prosecutor for the respondent/State.

Shri M.S. Rawat, Counsel for the complainant.

Case diary is available.

This is second application filed under Section 439 of Cr.P.C. for grant of bail. The first application was dismissed as withdrawn by order dated 29.10.2018 passed in M.Cr.C.No.41920/2018.

The applicant has been arrested on 1.9.2018 in connection with Crime No.139/2017 registered by Police Station Bijoli District Gwalior for offence punishable under Sections 304-B, 498-A and 34 of IPC.

It is submitted by the counsel for the applicant that the applicant is suffering from various diseases and documents have been placed on record to substantiate the submission.

Per contra, it is submitted by the counsel for the respondent/State as well as counsel for the complainant that all the documents were filed by the applicant in his previous bail application which was registered as M.Cr.C.No.41920/2018 and the medical health report of the applicant was called from the concerned jail. Accordingly, the medical health report dated 26.10.2018 was submitted by the Superintendent, Central Jail, Gwalior. After considering the medical health report of the applicant and after arguing the matter at length, the counsel for the applicant had 2 MCRC-51574-2018 withdrawn the first bail application on 29.10.2018.

In the present case also, all the documents which were filed along with the first bail application have been placed on record. Ground No.P is mentioned as under:

"(p) That, the applicant is suffering from illness and diseases and he was sent to J.A. Group of Hospitals, Lashkar from Central Jail, Gwalior for the treatment of his diseases."

This Court had already considered the documents of illness filed by the applicant in his previous bail application and on the basis of which, the medical health report of the applicant was also requisitioned and considering the medical health report, the first bail application was withdrawn. Nothing has been mentioned that the health condition of the applicant has deteriorated after rejection of his first bail application. Accordingly, this Court is of the considered opinion that the applicant has failed to make out any good ground for grant of bail on the health condition of the applicant.

It is next contended by the counsel for the applicant that the first bail application was withdrawn, therefore, the present application should be decided on merits.

This Court is conscious of the fact that while deciding the bail application, the superior Court must not disclose the reasons for rejecting the application as it may prejudice the Trial Court but in view of the submission made by the counsel for the applicant that the bail application should be decided on merits after considering the submissions, therefore, under compulsion this Court is deciding the bail application on merits. However, the Trial Court is expected not 3 MCRC-51574-2018 to get prejudiced by any of the observations which are being made by this Court in this order and the Trial Court is expected to conclude the trial strictly in accordance with the evidence which would come on record.

According to the prosecution case, the deceased was married to the son of the applicant on 7.12.2015. She committed suicide by hanging on 14.9.2017 and as per the postmortem report, she was pregnant at the time of her death. It is submitted by the counsel for the applicant that at the time of lash panchnama (inquest), the father and uncle of the deceased namely Satish and Narayan were also present but they have not made any complaint with regard to the harassment and thus it is clear that the subsequent allegations of harassment made by the family members of the deceased are afterthought and are not reliable.

The submission made by the counsel for the applicant is misconceived and is hereby rejected.

The basic purpose of inquest is not to find out that who has committed the offence and thus if the allegations against the accused persons are not made at the time of inquest proceedings, then it cannot be said that the subsequent allegations were afterthought and are not reliable.

It is further submitted that at the time of inquest proceedings, the husband and elder brother-in-law of the deceased were also present, therefore it is clear that they were not having guilty consciousness otherwise they would have absconded from the place of incident. The husband of the deceased was also present at the time of postmortem. It is further submitted that Narayan, uncle of the 4 MCRC-51574-2018 deceased was also present at the time of postmortem but at that time also he did not make any allegation of harassment, therefore, it is clear that the subsequent allegations of harassment are false.

Again the submissions made by the counsel for the applicant cannot be accepted for the simple reason that it is not the requirement of law that at the time of postmortem, the relatives must make

an allegation against the accused persons.

It is submitted by the counsel for the applicant that in fact the father of the deceased had taken a loan from the applicant and since the father of the deceased was not returning the said loan amount and just two days prior to her death, the deceased had gone to her parental home to attend the last ceremony of her grandfather and there also, she had requested her father to repay the loan amount to the applicant. However, the father of the deceased refused to repay the loan amount, therefore, under depression the deceased had committed suicide. It is submitted that in fact the father of the deceased is responsible for the death of the deceased and the applicant or any other in-laws of the deceased had never harassed the deceased for fulfillment of their demand of dowry. It is further submitted that the applicant had also made a representation to the police authorities on 9.10.2017 which is Annexure P/5 in which he had specifically disclosed that because of non-repayment of loan amount by the father of the deceased, the deceased has committed suicide under depression.

I have gone through the representation made by the applicant which has been placed on record as Annexure P/5. The applicant has not filed any document to show that he had ever paid any amount to the father of the deceased except by making bald and baseless 5 MCRC-51574-2018 allegation in Annexure P/5. It cannot be said that the father of the deceased had taken any loan from the applicant, therefore, the defence taken by the applicant for the purpose of bail is hereby rejected.

It is next contended by the counsel for the applicant that although in the postmortem, six antemortem injuries have been found, but it is well established principle of law that unless and until those injuries are found responsible for the death of the deceased, no adverse inference can be drawn against the applicant. It is further submitted that the applicant is an old and infirm person aged about 65 years and as he is already suffering from various diseases, therefore, his further incarceration would not be in the interest of justice. The trial is likely to take sufficiently long time.

Per contra, it is submitted by the counsel for the respondent/State that the deceased committed suicide on 14.9.2017 and the statements of the relatives of the deceased were recorded under Section 174 of Cr.P.C. on 18.9.2017 and in those statements, specific allegation of demand of dowry immediately after the marriage ceremony and harassment by the in-laws of the deceased have been made. There is no delay in making the allegations against the applicant and in-laws of the deceased. It is further submitted that in the postmortem report, six antemortem injuries were found on the body of the deceased, which clearly shows that before she committed suicide, she was badly beaten by in-laws, otherwise where a lady, who is pregnant and is expected to give birth to a child would not commit suicide and, therefore, at this stage, it can be presumed that the applicant and other in-laws of the deceased had created such a situation before the deceased which had left the deceased with no 6 MCRC-51574-2018 other option but to put an end to her life. It is further submitted that whether six antemortem injuries were responsible for the death or not, is not the material criteria because it is not a case of murder, but it is the case of harassment and cruelty by the applicant and the in-laws of the deceased and the consequential suicide by the deceased. The fact that the deceased was brutally beaten before she committed suicide merely establishes the cruel attitude and misbehavior of the applicant and other in-laws of the deceased because of non- fulfillment of their demand of dowry. It is further submitted that the deceased committed suicide on 14.9.2017 and immediately

thereafter the applicant absconded and he could be arrested on 1.9.2018 only after a reward was declared for his arrest.

It is submitted by the counsel for the complainant that the deceased was treated with cruelty and she was harassed by the applicant and other in-laws for demand of Rs.5,00,000/- which was made immediately after the marriage and the deceased had continuously complained about the harassment. The deceased had come to her parental home on 12.9.2017 to attend the last ceremony of her grandfather but when she went back she was badly beaten by the applicant and other in-laws, as a result of which, she was left with no other option but to commit suicide and under these circumstances, it is a glaring example where the applicant and other in-laws had treated the deceased with cruelty. It is further submitted that the applicant had remained absconding for a period of 1 year and 2 months and with great difficulty and after declaration of reward for his arrest, he could be arrested.

Considering the submissions made by the counsel for the 7 MCRC-51574-2018 parties, this Court is of the considered opinion that it is not a fit case for grant of bail.

The application is accordingly, rejected.

(G.S. AHLUWALIA) JUDGE (alok) ALOK KUMAR 2018.12.21 16:15:12 +05'30'