

Manish Malik vs State Of Haryana And Others on 16 March, 2011

Author: S.S. Saron

Bench: S.S. Saron

CRM No.M-34171 of 2010

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM No.M-34171 of 2010
Date of decision 16.03.2011

Manish Malik

.....Petitioner

Versus

State of Haryana and others

.....Respondents

Present: Mr. Navneet Singh, Advocate
for the petitioner.

Mr. G.S. Sandhu, AAG Haryana.

Mr. Vikram Punia, Advocate
for respondents No.2 and 3.

S.S. SARON, J.

An affidavit of Shri Randhir Singh, HPS, Deputy Superintendent of Police (Head Quarter), Sonapat on behalf of respondent No.1-State of Haryana filed today in the Court, is taken on record.

Heard counsel for the parties.

The petitioner, who is the complainant in case FIR No.4 dated 10.01.2010, registered at Police Station Murthal, District Sonapat, for the offences under Sections 498-A, 304B and 34 IPC, seeks cancellation of bail granted to Rajesh/mother-in-law and Mahavir/father-in-law of the deceased-Babita. It has been alleged by the complainant-petitioner that his sister Babita was married to Satish alias Bablu on 14.12.2006. In the marriage, the mother of the complainant-petitioner had given dowry more than her capacity. A motorcycle was also given on the demand of the in-laws of Babita. However, despite the dowry given, Babita was harrassed and asked

to bring more dowry. The petitioner gave Rs.2.00 lacs on one occasion and thereafter, his sister Babita was kept properly for about six months. Thereafter, they again beat her and asked her to bring Rs.3.00 lacs. The sister of the petitioner was sent back to the parental home. With the intervention of the Panchayat, the petitioner had sent his sister to her matrimonial home after convincing her. On 10.01.2010, the petitioner received a call on his mobile phone from his uncle Kartar Singh, who informed that his sister had died. It is alleged that the sister of the complainant namely Babita has been killed by administering poison to her in the greed for dowry by her husband Satish, mother-in-law Rajesh (respondent No.2), Father-in-law Mahavir (respondent No.3), younger brother of father-in-law-Ramphool, aunt of the deceased namely Poonam and brother-in-law of the sister of the complainant namely Amit, besides, sister-in-law Puja and Priti. Except Satish, husband of Babita, all other accused, in the investigation conducted, were initially found innocent. In terms of the challan filed on 19.2.2010, they were not sent up for trial. Challan was filed only against Satish-husband of the deceased-Babita. The other accused were placed in column No.2 of the challan. Thereafter, a supplementary challan dated 3.8.2010 was prepared, after re-investigation of the case which was conducted by Sh.Badri Parshad DSP, Sonapat. The said supplementary challan was presented against respondent Nos.2 and 3 as well, who were the parents-in-law of the deceased-Babita. The learned Additional Sessions Judge, Sonapat vide order dated 4.6.2010 (Annexure P-1) granted bail to Rajesh (respondent No.2). Thereafter, vide order dated 28.07.2010 (Annexure P-2) the bail was granted to Mahavir (respondent No.3). The petitioner seeks cancellation of the said bail granted to respondent Nos.2 to 3 vide order dated 4.6.2010 (Annexure P-1) and 28.7.2010 (Annexure P-2) respectively.

Learned counsel for the petitioner has contended that the respondent Nos.2 and 3 have been erroneously granted bail by learned trial court. It is submitted that the respondent Nos.2 and 3 misrepresented the facts that they were living separately in their house. In fact, they were living together with their children including Satish and his wife Babita (deceased) as per Ration Card (Annexure P-3). Therefore, it is submitted that the bail has wrongly been granted. It is submitted that the Supreme Court in Brij Nandan Jaiswal Versus Munna Alias Munna Jaiswal and another (2009) 1 Supreme Court Cases 678, has held that it is not as if once a bail is granted by any Court, the only way is to get it cancelled on account of its misuse and bail order can be tested on merits also.

Learned counsel appearing for the State and the respondents No.2 and 3 have submitted that respondent Nos.2 and 3 were not initially summoned to face trial. Thereafter, the matter was re-investigated and a supplementary challan was filed against respondent Nos.2 and 3. It is submitted that though the ration card of the petitioners is joint one, however, the site plan (Annexure R-1) filed with the reply, on behalf of respondent Nos.2 and 3, is sufficient to show that respondent Nos.2 and 3 were living separately from their son Satish and his wife Babita. Besides, it is submitted that after the grant of concession of bail, there is no allegation of misuse of the concession of bail by the respondent Nos.2 and 3.

I have given my thoughtful consideration to the contentions of the learned counsel for the parties. It may be noticed that an order granting bail can be tested on merits also, in view of the judgment of the Hon'ble Supreme Court in Brij Nandan Jaiswal's case (supra). However, it may be noticed that

the learned Sessions Judge, Sonapat has rightly granted the bail to respondents No.2 and 3 in the facts and circumstances of the case. It was noticed in the order dated 4.6.2010 (Annexure P-1), while granting bail to Rajesh (respondent No.2), that initially the Investigating Agency had found Rajesh (respondent No.2) absolutely innocent whereas in re-investigation, the second agency has proceeded against her. Therefore, this discrepancy definitely entitles her to bail, especially because she was looking after Hardik son of Babita. As per reply of DSP Randhir Singh (Head Quarter), Sonapat however, it is Gurmeet son of Babita who is in the custody of Rajesh (respondent No.2). It was also noticed that couple was living separately from the other members of the family. This aspect has however been disputed by learned counsel for the petitioner on the basis of ration card (Annexure P-3). On the other hand, learned counsel for the respondents No.2 and 3 have contended that they were living separately, as is evident from the site plan (Annexure R-1) filed with reply of respondents No.2 and 3. This Court while considering an application for cancellation of bail would not go into the fact as to whether they were living separately or not. This aspect would more appropriately be considered and gone into by the learned trial Court after leading evidence by the parties. The learned Sessions Judge, Sonapat vide order dated 28.7.2010 (Annexure P-2) has granted bail to Mahavir (respondent No.3), father-in-law of deceased-Babita on the ground that allegations against respondent No.3/Mahavir are similar to those against co-accused Rajesh. Rajesh (respondent No.2) was granted bail by the learned Sessions Judge vide order dated 4.6.2010 (Annexure P-1) on the ground that initially the Investigating Agency had found her innocent, Besides, she is looking after Hardik, son of Babita (deceased). Thus, on merits, the learned Sessions Judge has passed a reasoned order while granting bail to respondents No.2 and 3. There are no circumstances to show that the respondents No.2 and 3 have misused the concession of bail that has already been granted by the learned Sessions Judge. In the circumstances, it may be noticed that there are no such grounds which may warrant cancellation of bail that has been granted to respondent Nos.2 and 3 especially when there has been no misuse of concession of bail that has already been granted. It may be noticed that rejection of bail is on one footing while cancellation of bail, is a harsh order since it takes away liberty of an individual. Therefore, it is not to be lightly resorted to in normal circumstances unless the person to whom the bail has been granted, tries to interfere with the due course of justice or attempts to tamper with the evidence of witnesses or threatens the witnesses or indulges in activities which would hamper the smooth trial of the case. Besides, while hearing of application for cancellation of bail, the Court generally do not examine the merits of the order whereby the bail had been granted and it has to be primarily seen whether the accused who has been granted the concession of bail, has misused the same. Admittedly, there are no circumstances which show that the respondents No.2 and 3 have misused the concession of bail. This Criminal Miscellaneous accordingly stands dismissed.

March 16, 2011
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(S.S. SARON)
JUDGE