
Vijay Kumar Vs State of H.P.

Cr. MP (M) No. 1324 of 2014

Court: High Court of Himachal Pradesh

Date of Decision: Dec. 31, 2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) " Section 164, 439#Penal Code, 1860 (IPC) " Section 302, 307, 325, 326A, 34

Hon'ble Judges: Piar Singh Rana, J

Bench: Single Bench

Advocate: N.S. Chandel, Advocate for the Appellant; M.L. Chauhan, Additional Advocate General and Puneet Razta, Deputy Advocate General, Advocate for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Piar Singh Rana, J.

Present bail application filed under Section 439 Cr.P.C. in connection with FIR No. 64 of 2014 dated 8.5.2014

registered at Police Station Barmana District Bilaspur H.P. under Sections 302, 307, 326-A, 325, 504 and 506 read with Section 34 Indian Penal

Code.

2. It is pleaded that applicant is innocent and has been falsely implicated in the present case. It is further pleaded that applicant has no direct or

indirect connection with the alleged crime. It is further pleaded that investigation in the present case is completed it is further pleaded that applicant

is only bread earner in the family. It is further pleaded that applicant will not tamper with prosecution evidence in any manner and abide by the

conditions imposed by the Court. It is further pleaded that applicant will also join investigation as and when directed to do so by the Investigation

Agency. Prayer for acceptance of bail application is sought.

3. Per contra police report filed. There is recital in the police report that deceased Anjana Kumari wife of Kamal Kumar was teacher in Oxford

School Barmana and she was preparing herself for going to school between 8.00 to 8.45 a.m. on dated 8.5.2014. There is further recital in the

police that deceased and her husband Kamal Kumar used to reside separately from accused persons. There is further recital in the police report

that mother-in-law Smt. Ram Pyari father-in-law Sh. Balak Ram and brother-in-law Sh. Vijay Kumar who are residing in the upper portion of the

house came down and started abusing to deceased Anjana Kumari and her husband Kamal Kumar. There is further recital in the police report that

Balak Ram father-in-law of the deceased Anjana Kumari threw gallon of kerosene oil upon the body of deceased Anjana Kumari and other co-

accused namely Vijay Kumar and Ram Pyari caught hold husband of deceased so that husband of deceased could not save his deceased wife

Anjana Kumari from burnt injuries. There is further recital in the police report that after pouring the entire gallon of kerosene oil upon the body of

deceased Anjana Kumari co-accused Balak Ram lit fire with match box upon body of deceased Anjana Kumari. There is further recital in the

police report that deceased Anjana Kumari sustained 90% burnt injuries and there is further recital in the police report that husband of deceased

Sh. Kamal Kumar also sustained injuries. There is further recital in the police report that after registration of case site plan was prepared and burnt

clothes of deceased were taken into possession vide seizure memo. There is further recital in the police report that co-accused Balak Ram retired

from Police Department and he also tried to cause disappearance of evidence. There is further recital in the police report that deceased was

referred to IGMC Hospital Shimla. There is further recital in the police report that on dated 24.6.2014 deceased died. There is further recital in the

police report that as per post mortem report deceased died as a result of septicemic shock 72% thermal injury case. There is further recital in the

police report that relations between deceased and accused were not cordial because deceased married with Kamal Kumar against the consent of

parents of Kamal Kumar. There is further recital in the police report that eye witness of the instant case is Kamal Kumar and statement of Kamal

Kumar was recorded under Section 164 Cr.P.C. There is further recital in the police report that co-accused Ram Pyari and co-accused Vijay

Kumar caught hold Kamal Kumar when co-accused Balak Ram threw kerosene oil upon the body of deceased and when co-accused Balak Ram

lit fire with match box upon body of deceased. There is further recital in the police report that co-accused Ram Pyari already stood released on

bail by the High Court of Himachal Pradesh and there is further recital in the police report that challan already stood filed in the Court on dated

31.7.2014. There is further recital in the police report that if the applicant is released on bail then applicant will induce and threaten prosecution

witnesses. There is further recital in the police report that if the applicant is released on bail trial of the case will be adversely affected. Prayer for

rejection of bail application sought.

4. Court heard learned Advocate appearing on behalf of the applicant and learned Additional Advocate General appearing on behalf of the State

and also perused the record carefully.

5. Following points arise for determination in this bail application:-

Point No. 1

Whether bail application filed under Section 439 Cr.P.C. is liable to be accepted as mentioned in memorandum of grounds of bail application?

Point No. 2

Final Order.

Findings on Point No. 1

6. Submission of learned Advocate appearing on behalf of applicant that applicant is innocent and he did not commit any offence cannot be

decided at this stage. Same facts will be decided by learned trial Court after giving due opportunity to both the parties to adduce evidence in

support of their version.

7. Another submission of learned Advocate appearing on behalf of the applicant that investigation is completed and applicant will abide by terms

and conditions imposed by the Court and applicant did not take any active part on this ground bail application be allowed is rejected being devoid

of any force for the reasons hereinafter mentioned. At the time of granting bail following factors are considered. (i) Nature and seriousness of

offence (ii) The character of the evidence (iii) Circumstances which are peculiar to the accused (iv) Possibility of the presence of the accused at the

trial or investigation (v) Reasonable apprehension of witnesses being tampered with (vi) The larger interests of the public or the State. In the

present case allegations against the applicant are very heinous and grave in nature. Allegations against the applicant are that applicant had caught

hold Kamal Kumar husband of deceased so that Kamal Kumar could not rescue his deceased wife Anjana Kumari when co-accused Balak Ram

threw kerosene oil upon the body of deceased Anjana Kumari and when co-accused Balak Ram lit fire upon the body of deceased with match

box. There is grave allegation of active participation of the applicant Vijay Kumar in the present case. Court is of the opinion that if the applicant is

released on bail at this stage then trial of the case will be adversely affected. Court is of the opinion that if the applicant is released on bail at this

stage then interest of State and general public will be adversely affected.

8. Another submission of learned Advocate appearing on behalf of the applicant that co-accused Ram Pyari already stood released on bail and on

the concept of parity applicant be also released on bail is rejected being devoid any force for the reasons hereinafter mentioned. It is settled law

that there is special provision of bail for women, minors and old age persons. Court is of the opinion that bail was granted to co-accused Ram

Pyari in view of the special provision provided for releasing of women on bail even in offence punishable under Section 302 IPC. Court is of the

opinion that special privilege which is available for female qua offence punishable under Section 302 IPC is not available to male who has attained

majority. It is proved on record that applicant Vijay Kumar is a male accused and it is also proved on record that applicant has attained the age of

majority at the time of commission of alleged criminal offence. Hence it is held that it is not expedient in the ends of justice to release the applicant

on bail on the ground that other co-accused Ram Pyari female already stood released on bail by the High Court of Himachal Pradesh.

9. Submission of learned Additional Advocate General appearing on behalf of non-applicant that if the applicant is released on bail then applicant

will induce and threaten the prosecution witnesses and in view of the gravity of offence punishable under Section 302 bail application filed by the

applicant be rejected is accepted for the reasons hereinafter mentioned. Court is of the opinion that applicant is facing criminal trial under Section

302 IPC and in view of the fact that there are grave allegations against the applicant qua commission of offence under Section 302 IPC and the

fact that there are grave allegation that applicant actively participated in the commission of grave criminal offence by holding Kamal Kumar so that

Kamal Kumar husband of deceased could not save his deceased wife Anjana Kumari when co-accused Balak Ram threw kerosene oil upon the

body of deceased and when co-accused Balak Ram lit fire upon the body of deceased with match box which resulted 72% burnt injuries to

deceased Anjana Kumari with thermal. Even in the present case dying declaration of Anjana Kumari was recorded by the Investigating Agency. In

view of the above stated facts it is held that it is not expedient in the ends of justice to release the applicant on bail at this stage. Point No. 1 is

answered in negative.

Point No. 2

Final Order

10. In view of my findings on point No. 1 bail application filed by applicant under Section 439 Cr.P.C. is dismissed. My observations made in this

order will not affect the merits of case in any manner and will strictly confine for the disposal of this bail application filed under Section 439 of

Code of Criminal Procedure 1973. All pending application(s) if any also disposed of.