

Nirmala Devi Vs State of H.P.

Court: High Court of Himachal Pradesh

Date of Decision: Dec. 17, 2015

Acts Referred: Constitution of India, 1950 - Article 15, 21
Criminal Procedure Code, 1973 (CrPC) - Section 164, 437, 439, 439(2)
Penal Code, 1860 (IPC) - Section 302, 34

Hon'ble Judges: Piar Singh Rana, J.

Bench: Single Bench

Advocate: Rajesh Mandhotra, Advocate, for the Appellant; Rupinder Singh Thakur, Additional Advocate General and J.S. Rana, Assistant Advocate General, for the Respondent

Final Decision: Disposed Off

Judgement

@JUDGMENTTAG-ORDER

Piar Singh Rana, J.

Present bail application is filed under Section 439 Code of Criminal Procedure 1973 for grant of bail in connection

with case FIR No. 135 of 2014 dated 24.10.2014 under Sections 302 and 34 IPC registered at Police Station Lambagaon District Kangra H.P.

2. It is pleaded that investigation in the case is completed and no fruitful purpose will be serviced by keeping petitioner in jail. It is further pleaded

that petitioner is falsely implicated in the present case. It is further pleaded that petitioner filed application before the SDM Office Jaisinghpur in the

year 2009 wherein it was pleaded by the present petitioner that her son namely Sanjeev Kumar and her daughter-in-law Reena Devi since

deceased were treating petitioner with cruelty and because of ill treatment petitioner disinherited both of them from her property. It is further

pleaded that petitioner is widow and she has been falsely implicated in the present matter. It is further pleaded that petitioner shall not threat or

induce any prosecution witnesses and will abide all the conditions imposed by the Court. Prayer for acceptance of bail application sought.

3. Per contra police report filed. As per police report FIR No. 135 of 2014 dated 24.10.2014 under Sections 302 and 34 IPC is registered in

Police Station Lambagaon District Kangra H.P. against the petitioner. There is recital in police report that statement of deceased Reena Devi was

recorded in the Hospital. There is further recital in police report that deceased Reena Devi informed that on 24.10.2014 Ramesh Kumar came and

broken the electric meter and thereafter broken the door of room and thereafter pushed deceased Reena Devi. There is further recital in police

report that co-accused Nirmala Devi told to throw the entire household articles of deceased outside their residential house. There is further recital

in police report that co-accused Nirmala Devi caught the deceased in the room and co-accused Ramesh Kumar @ Rangil Singh came with

kerosene oil in his hand and spread the kerosene oil upon the body of deceased and thereafter lit fire upon body of deceased. There is further

recital in police report that two children of deceased Reena Devi were present and the husband of deceased was working in a field when deceased

was burnt with fire. There is further recital in police report that children of deceased called their father and thereafter water was thrown upon the

body of deceased and fire was extinguished. During the investigation Investigating Officer took photographs and inspected the place of incident

and prepared site plan and also prepared seizure memos. As per MLC No. 306 of 2014 deceased had sustained grievous burnt injuries to the

extent of 40-50 percent. Thereafter deceased was referred to RPGMC Tanda. Statements of minor children of deceased namely Rishu and

Sameer recorded under Section 164 Cr.P.C. There is further recital in police report that during medical treatment deceased died on 2.11.2014.

Viscera of deceased was sent for chemical examination. As per chemical examination report deceased died due to septicaemic shock and ante-

mortem burn injuries. There is further recital in police report that investigation already stood completed and challan stood filed in the Court for trial.

There is further recital in police report that if petitioner is released on bail at this stage then petitioner will threat and induce prosecution witnesses.

Prayer for rejection of bail application sought.

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

and also perused entire 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 after completion of investigation as mentioned in memorandum of

grounds of bail application in view of special provision of bail mentioned under proviso of Section 437 Cr.P.C. 1973 relating to minors or women

or sick or infirm persons relating to criminal offences punishable with death or imprisonment for life?

Point No. 2

Final Order.

Findings upon Point No. 1 with reasons:

6. Submission of learned Advocate appearing on behalf of petitioner that petitioner is innocent and petitioner 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 case.

7. Another submission of learned Advocate appearing on behalf of the petitioner that petitioner is female widow and investigation is completed in

the present case and petitioner be released on bail as per special provision of bail provided for women is accepted for 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. See Gurcharan Singh and Others Vs. State

(Delhi Administration), . Also see The State Vs. Captain Jagjit Singh, . It was held in case reported in Sanjay Chandra Vs. CBI, (Apex Court) that

object of bail is to secure the appearance of the accused person at his trial. It was held that grant of bail is the rule and committal to jail is

exceptional. It was held that refusal of bail is a restriction on personal liberty of individual guaranteed under Article 21 of the Constitution. It was

further held that accused should not be kept in jail for an indefinite period. It is well settled law that accused is presumed to be innocent till

convicted by a competent court of law. Court is of the opinion that there is special provision for bail to women, minors and infirm persons as per

proviso of Section 437 Cr.P.C. even in heinous criminal offence punishable with death or imprisonment for life. In view of the fact that trial in

present case will be concluded in due course of time and in view of the fact that there is special provision of bail for women relating to heinous

criminal offence punishable with death or imprisonment for life Court is of the opinion that it is expedient in the ends of justice to release the

petitioner on bail at this stage. Court is also of opinion that if the petitioner is released on bail at this stage then interest of State and general public

will not be adversely affected in view of special provision of bail for women relating to heinous criminal offence. It was held in case reported in Mt.

Choki Vs. The State, that special treatment of women and children in bail matter is not inconsistent with Article 15 of Constitution of India.

8. Submission of learned Additional Advocate General appearing on behalf of non-petitioner that if petitioner is released on bail at this stage then

petitioner will induce and threat prosecution witnesses and on this ground bail application filed by the petitioner be rejected is devoid any force for

the reasons hereinafter mentioned. Court is of the opinion that conditional bail will be granted to the female petitioner and if petitioner will flout the

terms and conditions of conditional bail order then prosecution will be at liberty to file application for cancellation of the bail as provided under

Section 439(2) Code of Criminal Procedure 1973. In view of the above stated facts point No. 1 is answered in affirmative.

Point No. 2 (Final order):

9. In view of findings upon point No. 1 bail application filed by female petitioner under Section 439 Cr.P.C. is allowed and female petitioner is

ordered to be released on bail subject to furnishing personal bond to the tune of Rs. 1 lac with two sureties in the like amount to the satisfaction of

learned trial Court on following terms and conditions. (i) That petitioner shall make herself available for interrogation whenever and wherever

directed to do so in accordance with law. (ii) That petitioner will not directly or indirectly make any inducement, threat or promise to any person

acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or to any police officer. (iii) That the

petitioner shall not leave India without the prior permission of the Court. (iv) That petitioner will not commit similar offence qua which she is

accused. (v) That petitioner will give her residential address in written manner to the Investigating Officer and Court where female petitioner could

be located within short time notice. (vi) That petitioner will join proceedings of learned trial Court regularly till conclusion of trial. Petitioner will be

released on bail only if she is not required in any other criminal case. Observations will not affect the merits of case in any manner and will strictly

confine for the disposal of present bail application filed under Section 439 of Code of Criminal Procedure 1973. Cr.MP(M) No. 1741 of 2915 is

disposed of.