

High Court Of himachal pradesh

Criminal Miscellaneous Petition (Main) No. 81 Of 2012

Judgment Date:

28-02-2012

Ajay Chandel

..Petitioner

State Of Himachal Pradesh

..Respondent

Bench:

{ HON'BLE MR. JUSTICE KULDIP SINGH, JUDGE }

Citation:

LQ/HimHC/2012/240 ;

Kuldip Singh, Judge

1. This is an application under Section 439 Cr.P.C. for releasing the petitioner on bail in FIR No. 293 of 2011 dated 19.11.2011, registered at Police Station, Sadar, Bilaspur, under Sections 306, 201, 34 IPC and Section 3 (XV) Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The prosecution case, in brief, is that on 16.11.2011 the deceased Ranjana Devi had gone to college at Bilaspur and at about 1.50 P.M., a telephonic call was received by her mother informing her that Ranjana Devi has been admitted in the hospital at Bilaspur. On reaching the hospital, it was found that Ranjana Devi had expired.

2. It has been alleged that Ranjana Devi used to talk to petitioner. The deceased was engaged about four months back which fact was known to the petitioner. The petitioner enticed the deceased on 16.11.2011 and took her to Baner where petitioner and deceased took meals in a 'dhaba'. The deceased after taking meals started vomiting. The deceased was taken to hospital at Bilaspur where she died. It has been alleged that deceased consumed poison at the instance of the petitioner. On these allegations, the case was registered. The petitioner was arrested on 20.11.2011.

3. The petitioner filed bail application which was dismissed by learned Sessions Judge, Bilaspur, on 05.01.2012. The petitioner is innocent, he has been falsely implicated in the case. The investigation in the case is complete. There is no evidence connecting petitioner with the commission of the alleged offence. The petitioner is ready to furnish bail bonds. The prayer has been made for releasing the petitioner on bail.

4. The status report has been filed. It has been stated that case has been registered on statement under Section 154 Cr.P.C. of Devi Ram on 19.11.2011. He has stated that his daughter Ranjana Devi had been studying in Bilaspur College in B.Sc first year. On 16.11.2011 Ranjana Devi had gone to Bilaspur college and told the complainant that she would be returning very soon, but she did not return. The complainant received a call on

his mobile which was attended by his wife and some boy informed that Ranju had stomachache and was in Bilaspur hospital. On this, complainant and his son had gone to the hospital and found Ranjana Devi lying dead. The post mortem of the dead body was got conducted by the police and the body was cremated on 17.11.2011.

5. It has been stated that complainant came to know that petitioner and deceased were known to each other. The deceased was engaged 3-4 months back and the petitioner was aware of this. On 16.11.2011, the petitioner enticed the deceased to Baner. The petitioner and deceased stopped at Gurbax 'dhaba' where deceased started vomiting. It appeared that Ranjana Devi at the instance of petitioner consumed some poisonous substance or petitioner might have administered poison to Ranjana Devi through someone. The petitioner in a private car took Ranjana Devi to a private medical store and from there to R.H., Bilaspur where Ranjana died. On this case was registered.

6. It has been stated that petitioner was arrested on 20.11.2011. It has come in the investigation that petitioner has destroyed the sim of the mobile phone of the deceased on 17.11.2011. It has also come in the investigation that petitioner and deceased were in love for the last 1 1/2 years. On 16.11.2011 petitioner was taking deceased to Kapurthala for performing marriage, but deceased was not interested in marriage. It has also been stated that Pankaj Chandel brother of the petitioner and petitioner tortured the deceased mentally by saying sometimes 'Yes' and sometimes 'No' with regard to marriage of petitioner and deceased Ranjana. In these circumstances, at Baner, Ranjana got down from the bus and took some poisonous substance and started vomiting and ultimately Ranjana died. It has also come in the investigation that Ranjana belonged to Scheduled Caste. Pankaj Chandel was arrested on 20.12.2011 and was released on bail on 05.01.2012 by learned Sessions Judge, Bilaspur. The source of poison could not be traced. According to medical opinion, Ranjana Devi died due to cardio respiratory failure after consuming Organo Phosphorous insecticide (Diclorus). The bail application of the petitioner was rejected by learned Sessions Judge on 05.01.2012. The challan has been prepared on 31.01.2012 which is under scrutiny. It has been stated that in case the petitioner is released on bail, he can influence the prosecution witnesses. The submission has been made for rejection of bail application.

7. Heard and perused the record. It emerges from the status report that petitioner and deceased Ranjana were in love for the last about two years. It has also been stated in the status report that Ranjana got down from the bus and consumed poison at Baner, but source of poison has not been traced. According to the prosecution, petitioner and his brother Pankaj were sometimes saying 'Yes' and sometimes 'No' to the marriage of Ranjana with petitioner. The father of the deceased has stated that Ranjana had been engaged about 3-4 months ago. It is also the prosecution case that the deceased belonged to Scheduled Caste. In the status report, it has also been stated that deceased did not want to perform marriage, but simultaneously it has also been stated that petitioner enticed the deceased and was taking her to Kapurthala for performing marriage. The other accused Pankaj has been released on bail by learned Sessions Judge.

8. In S.S.Chheena vs. Vijay Kumar Mahajan and another : (2010) 12 SCC 190 , it has been held that abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. The intention of the legislature is clear that in order to convict a person under section 306 IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and that act must have been intended to push the deceased into such a position that he committed suicide. The prosecution has not pointed out any previous writing or complaint of the complainant or the deceased regarding the conduct, behaviour of petitioner towards deceased nor prosecution has pointed out such unimpeachable material so as to point out needle of suspicion that in fact petitioner is instrumental for compelling the deceased to take ultimate step to end her life by taking poison. In the facts and circumstances of the case, the petitioner has made out a case for grant of bail under Section 439 Cr.P.C.

9. In view of above, application is allowed. The petitioner is ordered to be released on bail in FIR No. 293 of 2011 dated 19.11.2011, registered at Police Station, Sadar, Bilaspur, under Sections 306, 201, 34 IPC and Section 3 (XV) Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, on his furnishing personal bond in the sum of ₹ 50,000/- with one surety of the like amount to the satisfaction of Chief Judicial Magistrate, Bilaspur.

Bilaspur, with the condition that petitioner shall not tamper with the prosecution evidence in any manner nor shall overawe, influence prosecution witnesses. The observations made in the judgment are for the disposal of the bail application and shall not be construed as an expression of opinion on the merits of the case

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