

CASE NO.:
Appeal (crl.) 324 of 2001

PETITIONER:
PRAHLAD SINGH BHATI

Vs.

RESPONDENT:
N.C.T., DELHI & ANR.

DATE OF JUDGMENT: 23/03/2001

BENCH:
K.T. Thomas & R.P. Sethi.

JUDGMENT:

SETHI, J.

Leave granted.

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Respondent NO.2, who is alleged to have murdered his wife and against whom FIR No.566/92 was registered in the Police Station Lajpat Nagar under Section 302 of the Indian Penal Code, was released on bail by the Metropolitan Magistrate, New Delhi on 22nd August, 2000. The revision filed against the aforesaid order has been dismissed by a learned Single Judge of the High Court by passing a telegraphic order to the effect "having considered the case before me I am of the opinion no ground has been made for cancellation of bail". Not satisfied with the order of the Magistrate and that of the High Court, the father of the deceased has approached this Court in this appeal by special leave.

The deceased and the respondent No.2 were married on 24.11.1984. She is alleged to have been subjected to ill-treatment on account of demand for dowry. Huge amounts are stated to have been paid by the appellant to the accused on various occasions. On 18.3.1999 the respondent No.2 is alleged to have brought the deceased to her parental house on Scooter No.DL 9SC-0680 where he poured kerosene oil and burnt her alive in the presence of her parents. As no case was registered against the accused, the appellant approached higher authorities including the Prime Minister of India, Home Minister of India and Commissioner of Police, Delhi, with the result that Deputy Commissioner of Police (South District) directed the registration of case under Sections 306 and 498A IPC. After registration of the case on 3.6.1999, the investigating officer recorded the statements of witnesses under Section 161 of the Code of Criminal Procedure. The accused-respondent moved an application for grant of anticipatory bail in terms of Section 438 of the Code of Criminal Procedure (hereinafter referred to as "the Code"). As the bail application was not seriously opposed by the Investigating Agency, the Additional Sessions Judge, New Delhi granted interim bail on 16.6.1999. Applications

for cancellation of the anticipatory bail were dismissed. However, while dismissing such an application on 13.9.1999, the Additional Sessions Judge observed that if on facts a case under Section 302 is made out against the accused, the State shall be at liberty to arrest him. On 1.7.2000 a charge-sheet was filed against the accused under Sections 302, 406 and 498A IPC by the investigating agency and he was directed to appear before the Metropolitan Magistrate, New Delhi on 8.8.2000. As he did not appear on that date in that court, non bailable warrants were issued against him for 22nd August, 2000. In the meanwhile the respondent filed a criminal miscellaneous application under Section 482 of the Code in the High Court without impleading the appellant as a party. The High Court kept the order of the Magistrate dated 8.8.2000 in abeyance till 22nd August, 2000. In his petition filed in the High Court, the accused suppressed the fact that a charge-sheet under Section 302 has been filed against him. Notice to the appellant was issued on 17th August, 2000 but in the meantime the respondent moved an application under Section 438 of the Code for anticipatory bail before the Additional Sessions Judge, Delhi for which no order was passed and direction was issued to the accused to first appear before the Magistrate on 22nd August, 2000 and pray for bail in accordance with law. When he appeared before the Magistrate, he was admitted on bail even in a case under Section 302 IPC. The revision petition filed in the High Court was dismissed in the manner as noticed hereinbefore.

From the facts, as narrated in the appeal, it appears that even for an offence punishable under Section 302 IPC, the respondent-accused was never arrested and he manipulated the prevention of his arrest firstly by obtaining an order in terms of Section 438 of the Code and subsequently a regular bail under Section 437 of the Code from a Magistrate.

Chapter XXXIII relates to the provisions as to bails and bonds. Section 436 provides that when any person accused of a bailable offence is arrested or detained without warrant by an officer incharge of the police station, or appears or is brought before a court and is prepared at any time while in the custody of such officer or at any stage of the proceedings before such court to give bail, such person shall be released on bail. Under Section 437 of the Code when a person accused of, or suspected of, the commission of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police station or appears or is brought before a court, he may be released on bail by a court other than the High Court and Sessions subject to the conditions that he does not reasonably appear to have been guilty of an offence punishable with death or imprisonment for life. The condition of not releasing the person on bail charged with an offence punishable with death or imprisonment for life shall not be applicable if such person is under the age of 16 years or is a woman or is sick or infirm, subject to such conditions as may be imposed. It does not, however, mean that persons specified in the first proviso to sub-section (1) of Section 437 should necessarily be released on bail. The proviso is an enabling provision which confers jurisdiction upon a court, other than the High Court and the court of Sessions, to release a person on bail despite the fact that there appears reasonable ground for believing that such person has been guilty of an offence punishable with death or imprisonment for life. There is no

gainsaying that the discretion conferred by the Code has to be exercised judicially. Section 438 of the Code empowers the High Court and the Court of Sessions to grant anticipatory bail to a person who apprehends his arrest, subject to the conditions specified under sub-section (2) thereof.

Even though there is no legal bar for a Magistrate to consider an application for grant of bail to a person who is arrested for an offence exclusively triable by a court of Sessions yet it would be proper and appropriate that in such a case the Magistrate directs the accused person to approach the Court of Sessions for the purposes of getting the relief of bail. Even in a case where any Magistrate opts to make an adventure of exercising the powers under Section 437 of the Code in respect of a person who is, suspected of the commission of such an offence, arrested and detained in that connection, such Magistrate has to specifically negate the existence of reasonable ground for believing that such accused is guilty of an offence punishable with the sentence of death or imprisonment for life. In a case, where the Magistrate has no occasion and in fact does not find, that there were no reasonable grounds to believe that the accused had not committed the offence punishable with death or imprisonment for life, he shall be deemed to be having no jurisdiction to enlarge the accused on bail.

Powers of the Magistrate, while dealing with the applications for grant of bail, are regulated by the punishment prescribed for the offence in which the bail is sought. Generally speaking if punishment prescribed is for imprisonment for life and death penalty and the offence is exclusively triable by the Court of Sessions, Magistrate has no jurisdiction to grant bail unless the matter is covered by the provisos attached to Section 437 of the Code. The limitations circumscribing the jurisdiction of the Magistrate are evident and apparent. Assumption of jurisdiction to entertain the application is distinguishable from the exercise of the jurisdiction.

The jurisdiction to grant bail has to be exercised on the basis of well settled principles having regard to the circumstances of each case and not in an arbitrary manner. While granting the bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character, behaviour, means and standing of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public or State and similar other considerations. It has also to be kept in mind that for the purposes of granting the bail the Legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the court dealing with the grant of bail can only satisfy it as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not excepted, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt.

In the instant case while exercising the jurisdiction, apparently under Section 437 of the Code, the Metropolitan Magistrate appears to have completely ignored the basic

principles governing the grant of bail. The Magistrate referred to certain facts and the provisions of law which were not, in any way, relevant for the purposes of deciding the application for bail in a case where accused was charged with an offence punishable with death or imprisonment for life. The mere initial grant of anticipatory bail for lesser offence, did not entitle the respondent to insist for regular bail even if he was subsequently found to be involved in the case of murder. Neither Section 437(5) nor Section 439(1) of the Code was attracted. There was no question of cancellation of bail earlier granted to the accused for an offence punishable under Sections 498A, 306 and 406 IPC. The Magistrate committed a irregularity by holding that "I do not agree with the submission made by the Ld. Prosecutor in as much as if we go by his submissions then the accused would be liable for arrest every time the charge is altered or enhanced at any stage, which is certainly not the spirit of law". With the change of the nature of the offence, the accused becomes disentitled to the liberty granted to him in relation to a minor offence, if the offence is altered for an aggravated crime. Instead of referring to the grounds which entitled the respondent-accused the grant of bail, the Magistrate adopted a wrong approach to confer him the benefit of liberty on allegedly finding that no grounds were made out for cancellation of bail.

Despite the involvement of important questions of law, the High Court failed in its obligation to adjudicate the pleas of law raised before it and dismissed the petition of the appellant by a one sentence order. The orders of the Magistrate as also of the High Court being contrary to law are liable to be set aside.

While allowing this appeal and setting aside the orders impugned we permit the respondent-accused to apply for regular bail in the trial court. If any such application is filed, the same shall be disposed of on its merits keeping in view the position of law and the observations made hereinabove. We would reiterate that in cases where the offence is punishable with death or imprisonment for life which is triable exclusively by a court of Sessions, the Magistrate may, in his wisdom, refrain to exercise the powers of granting the bail and refer the accused to approach the higher courts unless he is fully satisfied that there is no reasonable ground for believing that the accused has been guilty of an offence punishable with death or imprisonment for life.