SMT. REENA Vs. STATE OF UTTARAKHAND

Bench – J. Alok Singh

Appellant – Smt. Reena

Respondent – State of Uttarakhand

Citation – 338/2016

Issues –

When the arrest should be made and when the bail should be granted in cognizable offences?

Facts –

- An F.I.R. was got registered under Sections 304 I.P.C. by the mother-in-law of the present applicant, stating that applicant is a loose character lady; when Amit, husband of the applicant, used to go to his office, some loose character boys used to visit present applicant; whenever informant (mother-in-law of the present applicant) resisted, applicant used to abuse her and some time used to beat her.
- The applicant alleged also threatened to have Amit killed to procure benefits from "dying-in-harness" provision; on 14.06.2012, Amit was found laying on the road drunk with his motorcycle parked near him. The applicant brought him home in a rickshaw, where he died of strangulation, and the applicant cremated his body without post – mortem and declared it was a suicide.
- The applicant had notified the district court that she would surrender before them, in compliance of an order dated – 05. 03. 2013; thereafter the petitioner shall move an interim bail application. The applicant, complying with her terms, surrendered to the Haridwar Judicial Magistrate and was thereafter released on interim bail.
- A regular bail application was moved before the Sessions Judge at Haridwar which was rejected by the learned Sessions Judge.

Appellant's Arguments –

- It was contended that since applicant was not arrested during the investigation and applicant appeared before the Chief Judicial Magistrate Haridwar in compliance of the cognizance/summoning order as directed by this Court, therefore, learned Chief Judicial Magistrate ought to have released the applicant on furnishing her personal bond and sureties as contemplated under Section 88 Cr.P.C. to appear during the trial and there was absolutely no need to seek regular bail.
- Furthering their argument, it was said that after filing of chargesheet the applicant need not be sent to judicial custody as she was never arrested during the investigation. Since the applicant was never absconding, neither had a

history of criminal offences, therefore taking her into judicial custody was not at all necessary.

- Hence, the learned Sessions judge had committed legal wrong by denying the bail.

Respondent's Arguments –

- The counsel submitted that Section 88 is not independent and is always subject to the limitations provided under Sections 209, 437 and 439 Cr.P.C.
- Moreover, the applicant does not deserve bail considering the gravity of the offense.
- The applicant was not arrested during the investigation since there was a stay against her arrest;

Judgement –

The Court released the accused/applicant on the bail on furnishing her personal bond and two sureties of like amount to the satisfaction of learned A.C.J.M. Roorkee. Bail application stood allowed accordingly.

Relevant Paragraphs –

- Hon'ble Apex Court in the case of State of Kerala Vs. Raneef reported in 2011 (1) SCC 784 has held as under: "15. In deciding bail applications an important factor which should certainly be taken into consideration by the Court is the delay in concluding the trial. Often this takes several years, and if the accused is denied bail but is ultimately acquitted, who will restore so many years of his life spent in custody? Is Article 21 of the Constitution, which is the most basic of all the fundamental rights in our Constitution, not violated in such a case? Of course this is not the only factor, but it is certainly one of the important factors in deciding whether to grant bail."
- In view of the above, it can safely be said that personal liberty as granted by Article 21 of the Constitution of India should not be curtailed by making routine arrest of the accused. In my considered opinion, if either of the ground as mentioned in Section 41 (1) (a), (b), (ba) or (c), (d), (e), (g), (h), and (i) is not available, then arrest of the accused should be avoided.
- The combined reading of Sections 88, 209 and 437 Cr.P.C. would demonstrate that if an accused appears before the Magistrate in compliance of summon or warrant issued against him on a private complaint or police report and he is an accused for offence punishable less than seven years and he was never arrested during the investigation, Magistrate should ask such an accused to furnish his personal bond and sureties to the satisfaction of the Magistrate to remain present before the Court during the trial. However, if accused, in a offence triable by the Session Court or in a offence punishable for the period more than seven years, appears before the Magistrate, then such accused must move application for regular bail as provided under Section 437 or 439 Cr.P.C. and learned Court shall decide the bail application as per the scope of Sections 437 and 439 of Cr.P.C.
- In the present case, offence punishable under Section 304 I.P.C. is triable by Court of Session, however, only suspicion was casted against the applicant in

the F.I.R. as well in the chargesheet and there seems to be no direct or circumstantial evidence against the applicant, therefore, she ought to have been enlarged on bail by the Session Court.