

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1962 OF 2013
(Arising out of S.L.P. (Crl.) No.9440 OF 2012)

SHOKAT PANWAR

Appellant(s)

VERSUS

STATE OF RAJASTHAN & ORS.

Respondent(s)

WITH

CRIMINAL APPEAL NO. 1963 OF 2013
(Arising out of S.L.P. (Crl.) No.3576 OF 2013)

O R D E R

1 Heard Mr. U.U.Lalit, learned senior counsel in support of SLP(Crl.)No.9440 of 2012 and Mr. P.S. Narasimha, learned senior counsel in support of SLP(Crl.)No.3576 of 2013. Dr. Manish Singhvi, AAG, has appeared for the State of Rajasthan, in both the matters. Mr. Gopal Subramaniam, learned senior counsel, has appeared for respondent Nos.2 and 3 in SLP(Crl.)No.9440 of 2012 and Mr. H.P. Raval, learned senior counsel has appeared for the respondent No.2 in SLP(C)No.3576 of 2013.

2 Leave granted in both these matters.

3 Both these appeals arise out of impugned judgments and orders dated 27th November, 2012 and 8th February, 2013, passed by the Rajasthan High Court in S.B.Criminal Misc.Bail Application Nos.10296 of 2012 and 12537 of 2012 respectively.

4 The appellant in both these matters is the brother of one young lady by name Praveen. She was married to one Mohd. Rafiq on 10th August, 2006. She died in her matrimonial home due to asphyxiation in suspicious circumstances on 29th February, 2012 i.e. within seven years of her marriage. The respondent Nos.2 and 3 in SLP(Crl.)No.9440 of 2012 are the father-in-law and mother-in-law of the deceased, whereas the 2nd respondent in SLP(Crl.)No.3576 of 2013 is the wife of the paternal uncle of Md. Rafiq. All three of these respondents were charged under Sections 304B, 498A along with 201 and in the alternative under Section 302. What has happened here is that the respondents did not remain present before the trial court and on 11th July, 2012, the learned Magistrate had to pass an order declaring them to be absconders and directing initiation of action under Sections 82 and 83 of Cr.P.C. and directing that the advertisement of them being declared absconders be published appropriately. The contesting respondents in SLP(Crl.)No.9440 of 2012 did not specifically challenge this order but they had moved for bail prior thereto.

5 On 18th June, 2012, the matter came to be transferred to Special Sessions Judge dealing with atrocities on women and dowry cases and the learned Sessions Judge by his order dated 20th September, 2012, rejected the bail application. The learned judge specifically relied upon the law amongst others laid down by this Court in Lavesh Vs. State (NCT of Delhi)[(2012)(8)SCC 730] where this Court has held that where the accused is absconding and declared as proclaimed offender, there is no question of granting anticipatory bail. As far as respondent No.2 in SLP(Crl.)No.3576 of 2013 is concerned, she was not charged in the initial FIR, but subsequently her name was included in the case. Her application for anticipatory bail also came to be rejected. Respondent Nos.2 and 3 in the 1st matter and the respondent No.2 in the 2nd matter moved bail applications in the High Court. Those applications have come to be allowed by the impugned orders passed by the learned Single Judge and, therefore, these appeals.

6 Mr. Lalit and Mr. Narasimha, learned senior counsel for the

appellant in both these matters, submit that when respondents were declared as absconders, it was not expected of the High Court to grant them bail, particularly, in the teeth of the law laid down in the case of Lavesh (supra). The learned Judge in the impugned orders has not even referred to this judgment and has directed the parties to appear before the trial court and execute bail bonds. Apart from the fact that the contesting respondents were absconding, counsel have pointed out that deceased was being harassed by the family members of her husband on account of demands for dowry.

7 Mr. Gopal Subramaniam, learned senior counsel appearing for the respondents submits that in the 1st matter, the respondent No.2 is in the management of a hospital at Bikaner and states that he was in Jaipur, at the time of death of Praveen. He has also submitted that there is no material evidence as such to implicate these respondents. Mr. Raval, learned senior counsel has similarly submitted that there is no reason to implicate the aunt of Mohd Rafiq. On the other hand, Mr. Narasimha, learned senior counsel for the appellant has pointed out that there is a clear statement against her that she used to beat the deceased. Mr. Lalit has also drawn our attention to the fact that the deceased had made a statement on her own I-pad and it contains sufficient incriminating material. This is apart from the fact that a number of pages in her diary have been destroyed and, therefore, there is also an application under Section 201 of IPC. Counsel for the appellant therefore submits that in the facts of the present case and in view of the law declared by this Court in the case of Lavesh (supra), the impugned orders should be set aside.

8 We have noted submissions of the parties on both sides. The law laid down by this Court is required to be honoured by the High Court. It is the mandate of Articles 141 of the Constitution. In the instant case, the trial courts having specifically relied upon it, it was not expected of the High Court Judge to ignore the judgment and thereafter grant bail. Section 304B implies a presumption with respect to the dowry death and if that is the mandate of the statute it has to be taken seriously. A life is lost, whoever is responsible for it has to face the consequences. Normally, we would not have interfered with the bail orders granted in both these matters in as much nearly a year has gone thereafter. But in the present matter the fact, however, remains that the Magistrate had passed order under Sections 82 and 83 of Cr.P.C. on 11th July, 2012, and that order was not enforced until the High Court's orders passed on 27th November, 2012 and 8th February, 2013, which is a period of more than four months. To permit such a party to take advantage of the bail order would not be countenanced by the court. In the circumstances, we are constrained to pass the order cancelling the order passed by the High Court, which we hereby do. Presently, the accused are protected. The present protection available to them will continue for a period of two weeks hereafter. In the meanwhile they should surrender and may make appropriate applications seeking bail. The same shall be decided by the concerned court expeditiously. The bail applications as well as the trial, will be decided on their own merits.

9 The appeals are allowed as above and the impugned orders are set aside.

10 We make it clear that we have not expressed any opinion on the merits of the controversy and we have essentially decided the matter in the light of the law laid down by this Court in Lavesh's case.

.....J.
(H.L. GOKHALE

)

.....J.

(J.CHELAMESWAR)

NEW DELHI;
NOVEMBER 18, 2013.

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl) No(s).9440/2012
(From the judgement and order dated 27/11/2012 in SBCRM No.10296/2012, of
The HIGH COURT OF RAJASTHAN AT JAIPUR)

SHOKAT PANWAR

Petitioner(s)

VERSUS

STATE OF RAJASTHAN & ORS.

Respondent(s)

(With appln(s) for directions,exemption from filing O.T. and bringing on
record addl.documents and office report)

WITH SLP(Crl.)No.3576 of 2013

(with appln.(s) for exemption from filing O.T.and office report)

Date: 18/11/2013 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE H.L. GOKHALE

HON'BLE MR. JUSTICE J. CHELAMESWAR

For Petitioner(s) Mr. U.U. Lalit, Sr. Adv.
in SLP(Crl)9440/12 Mr. Abhishek Singh, Adv.
Ms. Bansuri Swaraj, Adv.
Mr. Samir Ali Khan,AOR.

in SLP(Crl.)3576/13 Mr. P.S. Narasimha, Sr. Adv.
Mr. Abhishek Singh, Adv.
Ms. Bansuri Swaraj, Adv.
Mr. Samir Ali Khan,AOR.

For Respondent(s) Mr. Ram Naresh Yadav, Adv.
Mr. Milind Kumar,AOR.

R.2 in Mr. H.P. Raval, Sr. Adv.
SLP(Crl.)3576/13 Mr. Shivmangal Sharma, Adv.
Mr. Jigar Patel, Adv.
Mr. Vivek R.Mohanty, Adv.
Mr. T. Mahipal ,AOR

R2&3 in Mr. Gopal Subramaniam, Sr. Adv.
SLP(Crl.)9440/12 Mr. Shiv Mangal Sharma, Adv.
Mr. Nishit Agarwal, Adv.
Mr. Sitesh Narayan Singh, Adv.
Mr. T. Mahipal ,AOR

UPON hearing counsel the Court made the following
O R D E R

Leave granted.

The appeals are allowed in terms of the signed order.

[Sheetal Dhingra]

A.R-cum-P.S.

[Sneh Lata Sharma]

Court Master

[Signed order is placed on the file]