

BAIL APPLICATION 3023/2014

BEFORE

THE HON'BLE THE CHIEF JUSTICE (ACTG) MR. K. SREEDHAR RAO

15.12.2014

:: O R D E R ::

Heard Ms. B. Devi, learned counsel, for the petitioner, and Mr. Z. Kamar, learned Public Prosecutor, Assam.

One Smt. X daughter of Siraj Ali aged about 25 years has complained to the Bhuragaon Police Station that the petitioner is the neighbour. He pretended love and under the promise of marriage, had sexual intercourse with the victim. The victim has become pregnant and carrying five months of pregnancy. The case is registered for committing offences against the petitioner and his father under Sections 120B/417/376 read with Section 34 IPC.

The order of the Sessions Judge is produced and it reads as follows:

"Ld. Counsel for both sides are present.

Call for LCR and CD has been received.

Seen the petition and heard both sides.

This is a petition filed U/S 439 Cr.PC praying for bail of accused Md. Jahirul Islam, who is in custody in connection with Bhuragaon P.S. Case No.103/2014; U/s. 120B/417/376/34 IPC.

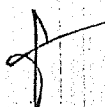
After going through the CD and from the statement recorded U/s 161 Cr.PC., I have found sufficient materials against the accused Md. Jahirul Islam. Hence, bail petition stand rejected.

Send back the LCR and CD.

The Crl. Misc. Case stand disposed on contest."

It is unfortunate that in the order, the Sessions Judge has written very cryptically that he has perused the Case Diary and found that there is prima facie material on the basis of the statement of the victim recorded under Section 161 Cr.PC.

The Sessions Judge/Magistrate is advised that in every order on bail applications, he/she has to narrate the prosecution's case. The defence contention should also be incorporated in the order. Thereupon, the Judge has to deal with the pros and cons of the prosecution version and the defence version and pass a reasoned order for granting or rejecting bail. In the present case, I find that the material placed on record clearly discloses that the statement of the victim indicts the petitioner of inducing her to sexual intercourse under false pretext of marriage. Even at the stage of five months' pregnancy, the petitioner has not kept up the promise and married her.



In rape cases, the Sessions Judge should be conscious of the law laid down by the Supreme Court that the name of the victim should never be disclosed and she should be addressed by alphabet as X or Y.

In that view of the matter, I find that there is a prima facie case and there is no ground to grant bail. Accordingly, petition is dismissed.

The Registry is directed to circulate the copy of this order to all the Judicial Officers of the State.

True Copy

17-12-14

sd/ K. Sreedhar Rao

Chief Justice Rao (Act)

Administrative Officer (Judl.)
Criminal Appeal Section
Gauhati High Court
Guwahati.

17-12-14

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND
ARUNACHAL PRADESH)

B.A. 3024/2014

Sri Kwmta Gwra Brahma.

-versus-

State of Assam

PRESENT

HON'BLE THE CHIEF JUSTICE(ACTING)
HON'BLE MR JUSTICE C. R. SARMA

For the petitioner : Sri N. Dutta
Amicus curiae

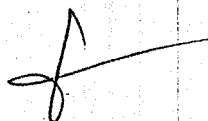
Date of hearing and judgment : 16.12.2014

JUDGMENT-AND-ORDER

In the present application two important questions of law have arisen for consideration.

2. The first question being the problem of fake sureties being offered by the accused and the accused remaining absconded. This matter was reported in daily newspapers. The said news report, however, has had tangential effect of slurring the image of the state judiciary in the minds of the people.

3. The 2nd question has arisen regarding the purpose and purport of the concurrent jurisdiction of the High Court and the Sessions Court in



the matter of grant of anticipatory bail(438 CrPC) and bail(439 CrPC). The matter has been heard at length.

4. Sri N Dutta, the learned senior counsel who was appointed as amicus curiae has rendered valuable assistance to the Court on both the questions. However, in respect of the 2nd question it requires further deliberations to have a comprehensive understanding of the proposition of law in respect of section 438 and 439 of the CrPC.

5. However, with regard to the problem of fake sureties the arguments have been addressed and we find that it is desirable at this stage to pass appropriate order on the problem of tackling the fake sureties who are offered before trial courts.

6. The learned senior counsel referred to the provisions of section 441 and 442 of the Criminal Procedure Code, which reads as follows.

"441. Bond of accused and sureties. - (1) Before any person is released on bail or released on his own bond, a bond for such sum of money as the police officer or Court, as the case may be, thinks sufficient shall be executed by such person, and, when he is released on bail, by one or more sufficient sureties conditioned that such person shall attend at the time and place mentioned in the bond, and shall continue so to attend until otherwise directed by the police officer or Court, as the case may be.

(2) Where any condition is imposed for the release of any person on bail, the bond shall also contain that condition.

(3) If the case so requires, the bond shall also bind the person released on bail to appear when called upon at the High Court, or Court of Session or other Court to answer the charge.

(4) For the purpose of determining whether the sureties are fit or sufficient, the Court may accept affidavits in proof of the facts contained therein relating to the sufficiency or fitness of the sureties, or, if it considers necessary, may either hold an inquiry itself or



cause an inquiry to be made by a Magistrate subordinate to the Court, as to such sufficiency or fitness.

442. Discharge from custody. – (1) As soon as the bond has been executed, the person for whose appearance it has been executed shall be released; and when he is in jail, the Court admitting him to bail shall issue an order of release to the officer in charge of the jail, and such officer on receipt of the orders shall release him.

(2) Nothing in this section, section 436 or section 437 shall be deemed to require the release of any person liable to be detained for some matter other than that in respect of which the bond was executed”.

7. The decision of the Supreme Court in *Bekaru Singh v. State of U.P.* reported in AIR 1963 SC 430, which reads as follows.

“When Bekaru furnished the surety bond he also filed an affidavit stating therein that the house mentioned in the surety bond was worth over Rs. 40,000/- Sri Ahmed Husain Vakil, certified that Bekaru possessed sufficient property to stand surety for its. 40,000/- In the circumstances, the Magistrate could accept Bekaru's surety bond. Of course the Magistrate could make further enquiry as well and it was for the purpose of further enquiry that he ordered verification from the Tehsil. Bekaru's bond, in our opinion, was accepted on July 9, subject to further orders on the receipt of the Tehsil report.

Further, Ram Narain's continuing on bail is justified by the provisions of 8. 500 Cr. P. C., once Bekaru's surety bond had been filed. Its sub-s. (1) provides that as soon as the bond has been executed, the person for whose appearance it has been executed shall be released. This contemplates that the accused is to be released on the execution of the bonds which should be accepted on their face value in the first instance. Section 501, Cr. P. C. provides for the issue of a warrant of arrest of the person so released on bail if it is subsequently found that through mistake, fraud or otherwise, insufficient sureties had been accepted, or if they afterwards became insufficient. We are therefore of opinion that formal acceptance of Bekaru's surety bond on August 20, 1958 by the Magistrate does not in any way affect Bekaru's liability on that bond from July 9, 1958. Any way, he was liable on that bond for the non-appearance of Ram Narain on a date subsequent to August 20, 1958”.



8. The English translation of the format of the bail bond to be furnished by the accused and the surety is also furnished, which reads as follows.

"BOND AND BAIL BOND ON PRELIMINARY ENQUIRY BEFORE A MAGISTRATE

(The second schedule, Act No.2 of 1974)

Case No...../ year

Under Sectionof Indian Penal Code.

I SriSon/wife ofvillage.....MouzaPolice StationDistrict

I brought before the Hon'ble Court ofMagistrateunder sectionof Indian Penal Code and I was asked to furnish bond for my presence in the said court or session's court. Therefore, I solemnly affirm that I will be present on the 1st day of appearance and each and every date of trial if taken cognizance then on being summoned will be appeared before the Magistrate and if requires then I will appear before another court also and present on the date of and on the subsequent dates to give answer against me. I solemnly affirm that if I failed to do so I shall be liable to pay Rs.....to the nation.

Sign.....

Date.....

I know the Bailor

He is competent to be a bailor.

Signature of the Advocate

Signature of the accused

Date

The said accused Sri has been implicated and after preliminary enquiry he has been brought to the Court of Magistrate at Guwahati on the dateand on the subsequent date and he will be present or if necessary he will be present in another Court of Magistrate and if the case will be present on that Court to give answer of the case. Therefore, on behalf of him I, Sri Son ofvillageMouza.....PoliceStationDistrict.....jointly and severally to take bail and solemnly affirm that on his failure I shall be financially compensate to the nation of Rs.....

Date.....

Signature of the bailor"

"District Kamrup
IN THE COURT OF JUDICIAL MAGISTRATE AT GUWAHATI
AFFIDAVIT

CASE No.....
Under Sectionof Indian Penal Code.
.....Complainant

-Vs-

..... Accused/ Accuseds

Today on the date deponent I, the deponent
Sri.....
Signed this affidavit on being identified
by Advocate,
S/o.....
signed before me by taking oath. aged about
....years.....religion.....

Profession.....village.....
Police Station..... Mouza
District

Signature of the Magistrate
Identified by me

1. A case under Sectionof Indian Penal
Code is registered against the above
mentioned accused person/accused
persons and the court allowed the accused
persons to go on bail on furnishing bail
bond of Rs.....for all (total).

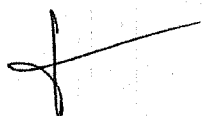
This is true to my knowledge and belief.

2. I agree to produce the above named
accused person/persons.

This is true to my knowledge and belief.

Full name and signature
of the Advocate

3. The deponent of this affidavit has the
scheduled mention immovable property of
Rs.....the said property is in my name
and under my possession and the said
schedule property is not encumbered by
way of gift, sale and mortgage, etc.



4. This affidavit shall be used as an evidence regarding the property of the bailor of the aforesaid accused person/persons. This fact is true to my knowledge and belief.

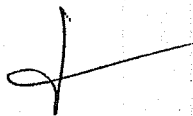
Description of the immovable property of the bailor.

1. K.P. Patta No.....
2. Dag No.....
3. Area
4. Village
5. Mouza
6. Approximate value of the property

Signature of the bailor".

9. The question of fake surety has a dual dimension ~ one being the person appearing as surety before the court impersonating himself as some other shown in the document of title. The other dimension would be, the person may be of genuine identity but he may produce a fake document of title to prove his solvency.

10. The learned senior counsel suggested a method to prevent and eliminate the impersonated sureties before Courts. It is submitted that invariably by and large the people will have voter identity card, the advocates who identify the surety will have enrollment number and the identity card given to him by the Bar Council of the state.



11. The Court at the time of accepting the surety should verify the personal identity of the surety with reference to the voter identify card and the surety to be identified by the advocate in the bond by mentioning his name and the enrollment number.

12. It is said that while accepting the surety the photograph of the person who offered surety is taken and that practice to be continued and the genuineness of the person who offers surety should be verified from his voter identity card besides taking his/her LTI/RTI and the impressions taken should not be smudged and the thumb impressions should be clearly visible. Once the genuineness of the person offering the surety is ensured, the Courts upon the affidavit of the surety should accept the surety and direct release of the accused. The Courts in order to ascertain the genuineness of the documents produced or about the solvency of the surety may refer the documents to the local authority or to the revenue authorities or the competent officer of the government to certify the correctness of the salary certificate or to ascertain the genuineness of the documents and also about the value of the property, as the case may be. If there is any adverse report from the authorities which is in conflict with the averments of the affidavit the Court may take legal action against the surety in accordance with law. This procedure have to be faithfully and strictly followed by all the trial courts while accepting the bail bonds and releasing the accused on bail.

13. The courts while dealing with the bail applications will have to deal with the grant of bail in respect of the offences which areailable and



non-bailable. In both the situations the trial courts to follow the above stated procedures regarding verification of the surety faithfully. However, with regard to the grant of bail it is always in the discretion of the court depending upon the facts and circumstances whether to grant the bail or not and to be in accordance with law.

14. Registry is directed to circulate the order immediately by fax to all the trial courts in the State.

15. For further hearing, call over after the winter vacation.

16. Copy of this order be hand-delivered to the Public Prosecutor Mr Z Kamar at once.

Sd/ C.R. Sarma
Judge

Sd/ K. Sreedhar Rao
Chief Justice (Act)

True Copy

17-12-14

Administrative Officer (Judl.)
Criminal Appeal Section
Gauhati High Court
Guwahati

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