Madhya Pradesh High Court
Mohan Raikwar vs State Of M.P. on 19 April, 1999
Equivalent citations: 1999 (2) MPLJ 663
Author: R Garg
Bench: R Garg
ORDER R.S. Garg, J.

Shri Narendra Nikhare learned counsel for the petitioner.

Shri S.K. Gangrade, learned counsel for the State.

1. Arguments heard.

2. Case Diary of Crime No. 117/99 registered at Police Station, Seoni, for the offences punishable under Sections 323, 294, 506 -II of the Indian Penal Code, read with Section 3/4 of the Dowry Prohibition Act, perused.

3. The prayer shows that barring Section 506, 11 of the Indian Penal Code, all other offences are bailable. It is unfortunate that for an offence punishable under Sections 323, 294, 506 II of the Indian Penal Code, and Section 3/4 of the Dowry Prohibition Act, the accused has to remain in jail, in absence of an order of bail, from 13-3-1999. The petitioner had moved this application for grant of bail as his application for release has been rejected by the learned Trial Judge and, thereafter, the application was rejected by the learned First Additional Sessions Judge on 17-3-1999. The repeat prayer has been rejected by the learned Additional Sessions Judge on 13-4-1999 simply on the ground that the earlier application was rejected on merits and there were no changed circumstances. The attention of the learned Judicial Magistrate and the Additional Sessions Judge are drawn to Section 503 of the Indian Penal Code, which defines Criminal Intimidation as under :-

"Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation. The explanation provides that a threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this section."

4. From a perusal of the definition it would appear that the threat must be with intent to cause alarm to that person or to cause that person to do any act or omit to do any act. Section 506 is in two parts. It reads as under :-

"Whoever commits the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

5. This part of Section 506 is commonly known as 506-A. The second part of Section 506 which is commonly described as 506B provides that :-

"if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or imprisonment for life, or with imprisonment for a term which may extend to 7 years, or to impute unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both."

6. The ingredients required to be stated in the first information report and to be proved during the course of the trial are that the accused threatened some persons with injury to his person, reputation or property, or to the person, reputation or property to another in whom that person is interested or threat was to cause death or grievous hurt etc. The intimidation must be extended with intention to cause alarm to that person. The first information report in the present case says that the complainant had contracted marriage of his daughter with Mohan Raikwar. The marriage was to be performed on 12-3-1999 but abruptly the said Mohan Raikwar made a demand of gold chain which the complainant was unable to meet. The complaint further reads that the 'barat' which was taking food and had not finished when the said Mohan Raikwar caused some injury to Satish, brother of the bride and at that point of time the said Mohan Raikwar refused to take the bride with him. On being asked not to do so the accused started abusing and caused an intimidation to kill. There was a written report lodged on 12-3-1999 itself at about 9 P.M. From the case diary it appears that the police came to the spot and compelled the accused to take the bride with him. On 12-3-1999 and 14-3-1999 the prosecution agency recorded the statement of some witnesses. On the report the accused was arrested on 13-3-1999. What is to be seen from the first information report is whether the complainant was in fact alarmed or the threat was an empty threat or was one to persuade the father-in-law of the accused to give something in dowry. From the first information report it no-where appears that the accused was armed with any weapon lethal or ordinary or he had done some act which stunned the complainant or other persons or caused an alarm in the mind of the complainant that if he was not to meet the demand of dowry he was to suffer grievous injury or the accused was likely to kill him. In absence of this material allegation for the purpose of this bail petition it can straightaway be said that the offence under Section 506 II of the Indian Penal Code, is not made out. The police in our country may register any offence against any person less realising that whether the offence is 'prima facie' made or not, because they have been trained to do so, but it is expected of a Magistrate and specially of an Additional Sessions Judge who has at least 10 or more years experience as a Judge that in what case bail should and should not be granted. It is high time to remind the Judges of the Lower Judiciary that they are required to exercise the powers which they possess and not to refuse to exercise the powers, vested in them, just for one reason or the other.

7. The learned Judge hearing the second petition does not lose his jurisdiction to grant bail. The changed circumstances do not mean some extra ordinary changes. Each day's confinement, each day's delay and each day's detention of the petitioner should be taken as a relevant consideration while considering the second application. I fail to understand that why without applying the mind to the facts of the case the Magistrate and the Additional Sessions Judge rejected the bail application. When a bail application is under consideration the Judge deciding the application is not only required to read the allegations made against the accused, but is also required to see whether prima facie the offence with which the accused is charged are made out or not. At one side a Judge rejects

the application without reading the facts observing that it was likely to prejudice the case of the accused or the prosecution and while considering the second application he rejects the same observing that the first application was rejected on merits.

8. The Magistrate or the Sessions Judge, while considering the application for grant of bail are also required to see whether the offence is triable by Magistrate First Class or by the Court of Session. They should not forget that many of the cases in which 7 years or more punishment is provided are triable by Magistrate First Class who has the jurisdiction to award the maximum sentence of 3 years. At this stage the court considering the bail application must not forget that if the accused is ultimately convicted he cannot be awarded a sentence of more than 3 years. The court considering the application must again look into the facts, the nature of the allegation, character of the evidence collected and should also see whether the allegations made are making out a prima facie case against the accused or the allegations even on their face entitle the accused to bail. There may be cases where on the first occasion considering the totality of the circumstances the Judge may reject the bail but after filing of the Challan or after discharge of the complainant from the hospital or after recovery of certain articles or after collection of certain other evidence the accused may be in a position to persuade the Judge to admit him to bail. It is not possible for this Court to give a myriad example but the court while applying its wisdom to the facts of the case must not forget that it has a discretion to grant bail and unless very strong evidence is produced before the Court, the personal liberty of the accused should not be interfered by unnecessarily keeping him in jail.' A Judge while deciding the application should not derive a sadistic pleasure in keeping the person in jail and he should not reject the application just for nothing. In a case like present the rejection of the application, on the ground that the earlier application was rejected after considering the merits, was not only contrary to the provisions of law but shows non-application of mind.

9. The application deserves to and is accordingly allowed. Petitioner Mohan Raikwar be released immediately on his furnishing personal bond in the sum of Rs. 5,000/- (Rs. Five Thousand, only) with one surety in the like amount, to the satisfaction of C.J.M. Seoni for his appearance before the trial Court as and when ordered.

10. Let a copy of this order be sent to the learned Magistrate before whom the matter is pending for trial and to the Additional Sessions Judge who had rejected the repeat application filed by the accused for understanding the letter of law in its true perspective.

C.C. as per rules.