

S.B. CRIMINAL MISC.IInd BAIL APPLICATION NO.6200/2004.

Bhagwan Sahai

Vs.

State.

Date of order :

21/12/2004.

HON'BLE MR.JUSTICE HARBANS LAL

Mr. Pankaj Gupta for the petitioner.

Mr. Arun Sharma PP for the State.

This second bail application under Section 439 Cr.P.C has been filed on behalf of petitioner Bhagwan Sahai whose first bail application was rejected vide order dated 3/11/2004 in FIR No.355/2004 PS Bandikui District Dausa for offences under Sections 498-A, 306 and 304-B IPC.

The main contention of the learned counsel for the petitioner is that he was arrested on 4/10/2004 whereas the charge-sheet for the offences under Sections 498-A and 304-B IPC was filed on 15/12/2004. It is contended by his learned counsel that though the case was initially registered for the offences under Sections 498-A, 406 and 304-B IPC but while his first bail application was rejected the case was found to be under Section 306 IPC and not under Section 304-B IPC and, thereafter, no substantial investigation has been made so as to bring the offence within the ambit of Section 304-B IPC. Thus, since the charge-sheet has been filed after the expiry of 60 days i.e. after about 72 days the petitioner is entitled to be released on bail under proviso (a)(ii) of Section 167(2) of the Code of Criminal Procedure, 1973 as has been done in the case of **Hari Kishen Vs. State of Rajasthan** in **SB Cr. Misc.Bail Application No.3714/2004**. He has also submitted that the challan has been filed for the offence under Section 304-B IPC in order to escape from the departmental action and this should not be given serious consideration so far as the nature of offence is concerned.

Learned PP has opposed the bail application. He has submitted that the case was initially registered for the offences including offence under Section 304-B IPC and FIR also contains allegation with regard to the offence under Section 304-B IPC. He

has also submitted that except in the statements of some of the witnesses

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examined during investigation the allegation of demand of dowry and perpetuality of cruelty in connection with the demand of dowry is supported by all other witnesses during investigation and it can not be said that no offence under Section 304-B IPC is made out and only an offence under Section 306 IPC is made out.

I have carefully considered the rival submissions made at the bar and have gone through the entire case diary.

It is obvious from a perusal of the case diary that since the inception of the case till the filing of charge-sheet, the allegation of torture in connection with the demand of dowry is supported and at no point of time and stage of investigation it has been observed that the offence under Section 304-B IPC is not made out. Simply because in some of the remand papers the offence under Section 304-B IPC has not been mentioned, it does not take out from the ambit of Section 304-B IPC so as to entitle the petitioner for grant of bail under the mandatory proviso (a) (ii) of Section 167(2) Cr.P.C. So far as the case referred to hereinabove is concerned, the facts of that case were clearly distinguishable from this case. So, it does not help the petitioner in any way. This apart, the orders with regard to grant of bail do not form binding precedents; they simply can be looked into as guidelines. In the instant case, the case is clearly falls within the ambit of Section 304-B IPC which is punishable with imprisonment for a term which shall not be less than 7 years but which may be extended to imprisonment for life and, therefore, the proviso (a)(i) of Section 167(2) Cr.P.C. is applicable to the instant case and in this view of the matter therefore, no case for grant of bail on the stated ground to the petitioner is made out.

Accordingly, this application deserves to be and is hereby dismissed.

(HARBANS LAL), J.

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