



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2022 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium, provided the original work is properly cited.

Case Comment: State of UP through CBI vs Amarmani Tripathi

Aryan Birewar^a

^aSymbiosis International University, Pune, India

Received 17 March 2022; Accepted 28 March 2022; Published 01 April 2022

STATEMENT OF FACTS

Relevant Provisions of CrPC: Section 161, Section 437, and Section 439.

Amarmani Tripathi, a UP State Minister, had an affair with Madhumitha Shukla. Their involvement in sexual intimacy led to the latter being pregnant thrice. Madhumitha Tripathi, the wife of Amarmani, was not happy with his extra-marital affair and told Rohit, Amarmani's cousin, to teach Madhumitha a lesson. Rohit introduced Madhumitha to Santosh Rai, who was told to kill Madhumitha at any cost. Rohit told Amarmani about their plan to kill Madhumitha. Amarmani accepted the plan, and his only condition was not to get linked to her murder, as it would affect his political career. After being pressed by Madhumitha several times, on 9th May 2003, Santosh Rai and Prakash Pandey entered Madhumitha's house and shot her from a close distance, which resulted in her death. Nidhi Shukla, Madhumitha's sister, lodged an FIR in the Mahanagar Police Station, Lucknow regarding the murder of her blind sister. At the government's request, the case was transferred from CID to CBI on 17th June 2003. The State of UP through CBI has appealed against the orders of the Allahabad HC, granting bail to Amarmani Tripathi and Madhumitha Tripathi.

ISSUES BEFORE THE COURT

1. Whether inadmissibility of the confession statement of the co-accused is good ground to be granted bail?
2. Whether tampering with witnesses and pressurizing investigation officers by the accused are material grounds to deny bail?
3. Whether a confessional statement of co-accused is a strong type of evidence?
4. Whether co-accused can be denied bail on the reasonable apprehension that close association with the prime accused can interfere with the due course of justice and investigation?

SUBMISSION OF PROSECUTION

Shri Gopal Subramaniam, Additional Solicitor General, appearing for the State of UP, submitted, Madhumitha was killed by a conspiracy, which had the involvement of Amarmani (prime accused) and Madhubani (co-accused) both. Amarmani, post bail, was trying to threaten witnesses and mislead the police by furnishing false evidence. Amarmani had an illicit relationship with Madhumitha, the pressure was imposed on her for third abortion and the factum of his distance from Madhumitha proves the inference that he didn't like Madhumitha anymore. Under *Section 439¹ of CrPC*, the bail application should take note of the confession statement by the co-accused. The involvement of Armani in the conspiracy was high, he orchestrated the murder, and thus here in absence of concrete physical evidence, the confession of Rohit shall be held admissible, and said confession is to be treated as substantial evidence.

SUBMISSION OF DEFENCE

Shri Rakesh Dwivedi, appearing for Amarmani Tripathi submitted that Courts examine the evidence to determine conspiracy, before resorting to confession by co-accused. The confessional statement is not the *primary or substantive evidence* to prove the guilt of the accused. In the present case, Rohit Chaturvedi, who was assured to be the approver, if he

¹ Code of Criminal Procedure, 1973, s 439

confessed the involvement of Amarmani in the conspiracy to kill Madhumitha. He withdrew his confession; hence his statement cannot be used as a ground for the conviction of Amarmani. Hence, the sole evidence of Amarmani's involvement in the conspiracy was the confession statement, which stands inadmissible.

CASES CITED

Dolat Ram & Ors v State of Haryana - (1995) 1 SCC 349: In this case, the SCI differentiated between material factors in the rejection of bail and its cancellation of bail. The interference in the due course of justice is a material factor in canceling the bail already granted.

S.N. Banerjee v State of West Bengal - (2004) Cri LJ 4215: For deciding on applications for cancellation of bails after being granted, the conduct of the accused after the release on bail and supervening circumstances is solely material.

Kalyan Chandra Sarkar v Rajesh Ranjan - (2004) Cri LJ 1796: In this case, as well, the only evidence with the prosecution was the confessional statement of the co-accused. There wasn't any evidence to implicate the accused in a criminal conspiracy. The Court also granted bail, on the count that a confessional statement cannot be treated as substantive evidence and a material factor for rejecting bail application.

Panchanan Mishra v Digambar Mishra - (2005) Cri LJ 172: The purpose behind canceling bail being granted is to ensure a fair trial and justice. For social good, if an accused in a criminal case is released on bail, he will try his best to fabricate evidence and threaten witnesses, to escape conviction.

Gurcharan Singh v State (Delhi Administration) - (1978) Cri LJ 129: The mere possibility of evidence and witness tampering does not sufficient grounds for bail rejection. However, when the character and status of the accused are so domineering that he will intimidate witnesses, then to prevent misuse of liberty for subversion of justice, the bail application shall be rejected.

JUDGMENT

The Allahabad HC had accepted the bail applications of Amarmani and Madhumani Tripathi based on the confessional statement of Rohit Chaturvedi. The CBI investigation has produced evidence, which has conclusive value. Amarmani Tripathi has threatened witnesses, fabricated evidence, and interfered in the investigation after the grant of bail. In the case of Madhumani Tripathi, she has no criminal record. The CBI Investigation report did not furnish any evidence of her interference in the investigation or fabrication of evidence per se. However, she was absconding all while and only surrendered on 25th March 2004, when her husband's bail application was dismissed by the Allahabad HC on 11th March 2004. This leads to a reasonable assumption that if her bail application is accepted then she will also tamper with evidence and interfere in the investigation process. Thus, considering *Section 437(3)² of CrPC*, the conduct of the accused has compromised the due process of investigation. The SCI set aside the bail acceptance orders of the Allahabad HC. It also annulled the bail bonds and directed the respondents to surrender, in an event where they deny, the State will take both of them into custody. Hence, the appeals were dismissed.

ANALYSIS

The recording of confession statements by Magistrates is provided under *Section 164³ of CrPC*. Here, Rohit, a co-accused made a confession on the condition of being an approver, however, retracted it later. In *State v Ram Autar Chaudhry⁴*, Allahabad HC held, "*Confession of co-accused is weak evidence, and not substantive to the extent of being considered a sole basis for conviction.*" Even though I subscribe to the SCI's reasoning here, the inadmissibility of co-accused confession cannot be a ground for accepting bail applications. The evidence of investigative agencies and other material must be given primary consideration. In my opinion, the Supreme Court was correct in setting aside the HC's orders, which granted bail to both Amarmani and Madhumani Tripathi. Under *Section 437(3)(c)⁵*, any person accused of

² Code of Criminal Procedure, 1973, s 437(1)

³ Code of Criminal Procedure, 1973, s 164

⁴ *State v Ram Autar Chaudhry* AIR 1955 All 138.

⁵ Code of Criminal Procedure, 1973, s 437(3) (c)

committing a punishable offence under IPC will be released on bail, provided no threat is given to the witness or no evidence tampering is done. However, in the present case, after being released, Amarmani offered a bribe to *Nidhi Shukla* to settle the matter there and then. Moreover, the accused furnished false information to the *SSP Lucknow*, about Madhumitha's marriage to Anuj Mishra. All these misdeeds presented in the CBI Investigation report, show that Amarmani interfered with the course of justice, tampered with evidence, and threatened witnesses. In *Prahlad Singh Bhati v State of NCT Delhi*⁶, Court held, "Nature of accusations, evidence, degree of punishment, character, peculiar circumstances and reasonable apprehension of evidence tampering, are considerations Courts have to take due note of." The HC's decision to accept the bail application of Amarmani was clearly in ignorance and disregarded the evidence material furnished by CBI. As for Madhumani Tripathi, I subscribe to the submissions of *KTS Tulsi*, who appeared for her. She had not directly interfered in process of investigation or fabricated evidence. However, the mere fact that she surrendered in March 2004, only because her husband's bail application under *Section 439⁷ CrPC*, was rejected is sufficient to show that if she is not arrested, even she might tamper with evidence to prevent her husband's conviction.

COMPARATIVE ANALYSIS

The provisions of Bail in the UK are akin to Indian law. The *Criminal Justice Act, of 1967*⁸ brought forth conditional bail under the *Bail Act, of 1976. Section 3⁹* of the act grants bail to the accused provided the conditions are met:

- (i) No interference with the witness,
- (ii) (ii) No obstruction of justice, and
- (iii) No communication with the victims and witnesses. Even under the *Bail Act, 2000* of New Zealand Part 3 (Court Bail), *Section 30¹⁰* provides for conditions of bail. Under

⁶ *Prahlad Singh Bhati v State of NCT Delhi* (2001) Cri LJ 1730

⁷ Code of Criminal Procedure, 1973, s 439

⁸ Criminal Justice Act, 1967

⁹ Bail Act, 1976, s 3

¹⁰ Bail Act, 2000, s 30

*Section 30(4)*¹¹, bail will be granted, when the judicial officer inserts a condition that the defendant will not intimidate the witness or tamper with evidence. Thus, in my opinion, there is a substantial similarity between conditional bails across various jurisdictions. In the UK, USA, and New Zealand jurisdictions, like India judicial officers will grant bail only when there is no reasonable apprehension of evidence tampering and witness intimidation by the defendant after granting bail.

CONCLUSION & SUGGESTION

The SCI is correct in setting aside the orders of the Allahabad HC granting bail to both the accused. The evidence collected by the CBI clearly shows the domineering positions of both accused to intimidate witnesses and interfere in the investigation, after being granted bail, under *Section 439 of CrPC*. In my opinion, public justice is core to bail jurisprudence. Thus, the allegation of witness and evidence tampering, by a person of domineering character, will be ground in rejecting bail application, as it would lead to subversion of justice.

Section 437 of CrPC, imposes conditions to be ensured before granting bail to the accused. It is important that denial of bail does not violate the Right to Personal Liberty:

- Firstly, the assuring accused is not denied bail, unless there is substantive evidence to prove his interference in course of the investigation.
- Secondly, non-bailable arrest warrants shouldn't be issued without informing the accused on bail about the filing of the charge sheet.
- *Lastly, Court should exercise judicial discretion to grant bail by following principles of public justice and social good.*

¹¹ Bail Act, 2000, s 30(4)