

SUPREME COURT OF INDIA

Munish Bhasin

State (Govt. of N.C.T. of Delhi)

Vs.

Crl.A.No.344 of 2009

(R.V. Raveendran and J.M. Panchal JJ.)

20.02.2009

JUDGEMENT

J.M. Panchal, J.

1. Leave granted. The complainant (wife of first appellant) to whom notice was ordered on 25.01.2008 is impleaded as second respondent.

2. Heard Counsel.

3. The appellant (accused no. 1) assails the condition imposed by the High Court requiring him to pay a sum of Rs.12,500/- as maintenance to his wife and child while granting anticipatory bail to him and his parents with reference to the complaint filed by his wife for alleged commission of offences punishable under Sections 498A and 406 read with Section 34 of the *Indian Penal Code*.

4. The marriage of the appellant was solemnized with Ms. Renuka on December 05, 2004. She has filed a complaint in November 2006, against the appellant and his parents for alleged commission of offences punishable under Sections 498A and 406 read with Section 34 of the Penal Code on the grounds that after marriage she was subjected to mental and physical cruelty for bringing less dowry and that her stri-dhan entrusted to them has been dishonestly misappropriated by them.

5. Apprehending arrest, the appellant and his parents moved High Court of Delhi for anticipatory bail. The application came up for consideration before a Learned Single Judge of the High Court on 22.02.2007. The Learned Additional Public Prosecutor accepted notice and submitted that the matter was essentially a matrimonial dispute and therefore the parties should be referred to the Mediation and Conciliation Cell of the Delhi High Court. The Learned Judge agreed with the suggestion made by the Additional Public Prosecutor and directed the parties to appear before the Mediation and Conciliation Cell of the Delhi High Court on March 02, 2007. The case was ordered to be listed on 10.05.2007.

“The Learned Judge further directed that in the event of arrest of the appellant and his parents, before the next date of hearing, they shall be released on bail on their furnishing personal bond in the sum of Rs.25,000/- each with one surety of like amount to the satisfaction of the Investigating Officer/ Arresting Officer concerned, subject however, to the condition that the appellant and his parents shall surrender their passports to the Investigating Officer and shall file affidavits in the Court that they would not leave the country without prior permission of the Court.”

6. From the records, it appears that the conciliation proceedings failed and therefore the bail application was taken up for hearing on merits. On representation made by the wife of the appellant, the counsel of the appellant was directed to produce appellant's salary slip.

“Accordingly, the salary slip of the appellant was produced before the Court which indicated that the appellant was drawing gross salary of Rs.41,598/- and after deductions of advance tax etc., his net salary was Rs.33,000/-. The Learned Single Judge of the High Court took the notice of the fact that the appellant had the duty to maintain his wife and the child and therefore as a condition for grant of anticipatory bail, directed the appellant, by the order dated 07.08.2007 to pay a sum of Rs.12,500/- per month by way of maintenance to his wife and child. The Learned Single Judge also directed to pay arrears at the rate of Rs. 12,500/- per month from August 2005, that is Rs. 3,00,000/- within six months.

The imposition of these conditions for grant of anticipatory bail is the subject matter of challenge in the instant appeal.”

7. From the perusal of the provisions of sub-section (2) of section 438, it is evident that when the High Court or the Court of Session makes a direction under sub- section (1) to release an accused alleged to have committed non-bailable offence, the Court may include such conditions in such direction in the light of the facts of the particular case, as it may think fit, including (i) a condition that a person shall make himself available for interrogation by police officer as and when required, (ii) a condition that the person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer, (iii) a condition that the person shall not leave India without the previous permission of the Court and (iv) such other conditions as may be imposed under sub-section (3) of section 437, as if the bail were granted under that section. Sub-section (3) of Section 437, inter alia, provides that when a person accused or suspected of the commission of an offence punishable with imprisonment which may extend to seven years or more or of an offence under Chapter VI, Chapter XVI or Chapter XVII of the Indian Penal Code or abetment of, or conspiracy or attempt to commit, any such offence, is released on bail under sub-section (1), the Court shall impose the following conditions- (a) that such person shall attend in accordance with the conditions of the bond executed under this Chapter, (b) that such person shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected, and (c) that such person shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of

the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence.

“The Court may also impose, in the interests of justice, such other conditions as it considers necessary.”

8. It is well settled that while exercising discretion to release an accused under Section 438 of the Code neither the High Court nor the Session Court would be justified in imposing freakish conditions. There is no manner of doubt that the Court having regard to the facts and circumstances of the case can impose necessary, just and efficacious conditions while enlarging an accused on bail under Section 438 of the Code.

“However, the accused cannot be subjected to any irrelevant condition at all. The conditions which can be imposed by the Court while granting anticipatory bail are 8 enumerated in sub-section (2) of Section 438 and sub-section (3) of Section 437 of the Code. Normally, conditions can be imposed (i) to secure the presence of the accused before the investigating officer or before the Court, (ii) to prevent him from fleeing the course of justice, (iii) to prevent him from tampering with the evidence or to prevent him from inducing or intimidating the witnesses so as to dissuade them from disclosing the facts before the police or Court or (iv) restricting the movements of the accused in a particular area or locality or to maintain law and order etc. To subject an accused to any other condition would be beyond jurisdiction of the power conferred on Court under section 438 of the Code. While imposing conditions on an accused who approaches the Court under section 438 of the Code, the Court should be extremely chary in imposing conditions and should not transgress its jurisdiction or power by imposing the conditions which are not called for at all.

There is no manner of doubt that the conditions to be imposed under section 438 of the Code cannot be harsh, onerous or excessive so as to frustrate the very object of grant of anticipatory bail under section 438 of the Code.

In the instant case, the question before the Court was whether having regard to the averments made by Ms. Renuka in her complaint, the appellant and his parents were entitled to bail under section 438 of the Code.

When the High Court had found that a case for grant of bail under section 438 was made out, it was not open to the Court to direct the appellant to pay Rs. 3,00,000/- for past maintenance and a sum of Rs.12,500/- per month as future maintenance to his wife and child. In a proceeding under section 438 of the Code, the Court would not be justified in awarding maintenance to the wife and child. The case of the appellant is that his wife Renuka is employed and receiving a handsome salary and therefore is not entitled to maintenance. Normally, the question of grant of maintenance should be left to be decided by the competent Court in an appropriate proceedings where the parties can adduce evidence in support of their respective case, after which liability of 10 husband to pay maintenance could be determined and appropriate order would

be passed directing the husband to pay amount of maintenance to his wife. The record of the instant case indicates that the wife of the appellant has already approached appropriate Court for grant of maintenance and therefore the High Court should have refrained from granting maintenance to the wife and child of the appellant while exercising powers under section 438 of the Code. The condition imposed by the High court directing the appellant to pay a sum of Rs.12,500/- per month as maintenance to his wife and child is onerous, unwarranted and is liable to be set aside.”

9. For the foregoing reasons, the appeal succeeds.

“The direction contained in order dated August 07, 2007 rendered by Learned Single Judge of Delhi High Court in Bail Application No. 423 of 2007 requiring the appellant to pay a sum of Rs.12,500/- per month by way of maintenance (both past and future) to his wife and child 11 is hereby deleted. Rest of the directions contained in the said order are maintained. It is however clarified that any amount received by the wife of the appellant pursuant to the order of the High Court need not be refunded by her to the appellant and will be adjusted subject to the result of application for maintenance filed by wife of the appellant under Section 125 of the Code before the appropriate Court.”

10. The Appeal is accordingly disposed of.