
(2017) 08 SC CK 0075

In the Supreme Court Of India

Case No : Crl.A. No 1536 of 2017 (Arising Out of SLP (Crl) No 4463 of 2017)

Kunal Kumar Tiwari @ Kunal Kumar

APPELLANT

Vs

The State of Bihar And Anr.

RESPONDENT

Date of Decision : 21-08-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 438](#) - Direction for grant of bail to person apprehending arrest

Citation : AIR 2017 SC 5416 : 2017 AIR(SCW) 5416 : 2018 AIR(SC)(CRI) 176 : (2018) 16 SCC 74

Hon'ble Judges : N.V. Ramana, J; Prafulla C. Pant, J

Bench : Division Bench

Advocate : MUSHTAQ AHMAD

Final Decision : Disposed Of

Judgement

1. Leave granted. 2. This case raises short but interesting point of law concerning the nature of conditions which may be imposed under Section 438 of Code of Criminal Procedure, 1973 [hereinafter "CrPC" for brevity] while granting anticipatory bail. At the outset, this case reflects on the need for judicial self-restraint and distaste for result oriented justice over a principled adjudication in consonance with the letter of law. 3. The appellant herein assails the order dated 17.05.2017, passed by the High Court in Criminal Miscellaneous No. 23807 of 2017, which was filed for modification of the earlier order dated 30.03.2017 in Cr. Misc. 4401 of 2017, by virtue of which the learned single judge confirmed the earlier order granting anticipatory bail with certain onerous conditions. 4. Some of the relevant facts are that after the marriage of the parties herein, respondent no 2 (wife) alleged that there was a demand, by the appellant (husband), for dowry and she was physically and mentally tortured for non-fulfillment of the same. Based on the above allegations, a complaint was registered with Hatidah Police Station under Sections 498-A, 341, 323, 379, 506, 34 IPC and Sections 3 and 4 of the Dowry prohibition Act, 1961. Appellant apprehending arrest submitted an application before the High Court seeking an anticipatory bail. In

pursuance thereof, the High Court has passed an order dated 30.03.2017 in Cri. Misc. No. 4401 of 2017 and order dated 17.05.2017 in Cri. Misc. No. 23807 of 2017. It would be useful for the purposes of the discussion herein to extract the directions passed by the High Court in Cri. Misc. No. 4401 of 2017- "Be that as it may, after talking with both husband and wife today, I am also of the view that, now, at this stage, there is no chance of both parties living together. Husband is working in Delhi Metro and it will be unnecessary harassment for both husband wife to come to court and place their case. Accordingly, this application is disposed off with direction to petitioner to surrender before the court below i.e. sub divisional Judicial Magistrate, Barh (Distt-Patna), within a period of four weeks from today in connection with complaint case no. 882 @ of 2015 along with wife. In the event the Court below find that petitioner is ready to keep the wife with full dignity and care but wife does not want to go with him or both parties are adamant to live separate and wants divorce with mutual consent under Section 13-B of the Hindu Marriage Act, the court below will release the petitioner on provisional bail to its own satisfaction for a period of one year and will monitor the relationship between the parties by calling both of them every three months in the court and in the event the court below finds that good conjugal relationship have been restored between husband and wife and wife does not make any complaint about the physical and mental torture committed by the petitioner during the period of her stay with him or the conjugal relationship could not be restored on account of indifferent attitude of the wife or both parties have agreed to live separate and take divorce with mutual consent under provisions of Section 13-B of the Hindu Marriage Act, the court below confirm the provisional bail granted to the petitioner after one year. It is made clear that in the event the petitioner does not surrender in the court below along with the wife, as ordered above, or the petitioner refuses to keep the wife with him when she become ready to go with him to live or the wife during the period of monitoring makes complain about physical and mental torture committed by the petitioner, it will be open to the court below to pass appropriate order in accordance with law including cancellation of provisional bail granted to the petitioner without taking into consideration the observations made above by this court." 5. Aggrieved by the order dated 17.05.2017, passed by the High Court of Judicature at Patna in Crim. Misc. No. 23807 of 2017, appellant is in appeal before this Court. When this matter was called for hearing on 07.06.2017, this Court issued notice and passed an order for interim protection of the appellant from arrest. 6. Today on behalf of the appellant it was contended that the High Court while passing aforesaid order for anticipatory bail, a condition like the one imposed could not have been imposed. 7. In order to appreciate the contention of the appellant, we must have a look at the relevant provisions under the CrPC. Section 438 of CrPC reads as under- Direction for grant of bail to person apprehending arrest. (1) When any person has reason to believe that he may be arrested on an accusation of having committed a nonbailable offence, he may apply to the High Court or the Court of Session for a direction under this section; and that Court may, if it thinks fit, direct that in the event of such arrest, he shall

be released on bail; ... (2) When the High Court or the Court of Session makes a direction under sub-section (1), it may include such conditions in such directions in the light of the facts of the particular case, as it may think fit, including- (i) a condition that the person shall make himself available for interrogation by a 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; (iv) such other condition as may be imposed under sub-section (3) of section 437, as if the bail were granted under that section. (3) If such person is thereafter arrested without warrant by an officer in charge of a police station on such accusation, and is prepared either at the time of arrest or at any time while in the custody of such officer to give bail, he shall be released on bail; and if a Magistrate taking cognizance of such offence decides that a warrant should issue in the first instance against that person, he shall issue a bailable warrant in conformity with the direction of the Court under subsection (1). (emphasis supplied) 8. The aforesaid provision would reveal that a person who is having an apprehension of arrest may apply for an anticipatory bail, either before the Court of Sessions or the High Court as the case may be. Sub-Section (2) of Section 438 states that either of the courts, in facts and circumstances of the case, may impose such conditions as prescribed under sub-clause (i) to (iv). It is important to note that under sub-clause (iv) the court may impose such conditions which can be imposed under Sub-Section (3) to Section 437 as if the bail was granted under that section. It would be necessary to observe Section 437 (3) of CrPC, which reads as - 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 subsection (1), the Court may impose any condition which the Court considers necessary- (a) in order to ensure that such person shall attend in accordance with the conditions of the bond executed under this Chapter, or (b) in order to ensure that such person shall not commit an offence similar to the offence of which he is accused or of the commission of which he is suspected, or (c) otherwise in the interests of justice. (emphasis supplied) 9. The above quoted provision reveals that the court can impose conditions as mentioned under sub-clause (a) to (c) under sub-section (3) to Section 437, provided that certain conditions prescribed there under are fulfilled. 10. Before we analyze the case at hand, first a word on interpretation. It is well settled legal proposition that in interpreting a provision of an Act, a construction that would promote the purpose or object underlying the Act (whether that purpose or object is expressly stated in the Act or not) should be preferred to an interpretation that would not promote the object. 11. There is no dispute that Sub-clause (c) of Section 437(3) allows Courts to impose such conditions in the interest of justice. We are aware that palpably such wordings are capable of

accepting broader meaning. But such conditions cannot be arbitrary, fanciful or extend beyond the ends of the provision. The phrase "interest of justice" as used under the Sub-clause (c) of Section 437(3) means "good administration of justice" or "advancing the trial process" and inclusion of broader meaning should be shunned because of purposive interpretation. 12. Coming back to the case at hand, from the perusal of the impugned order it is clear that the court exceeded its jurisdiction in imposing such arbitrary conditions. Some of the conditions imposed are highly onerous and are absurd. Such onerous anticipatory bail conditions are alien and cannot be sustained in the eyes of law. The conditions imposed appear to have no nexus with the good administration of justice or advancing the trial process, rather it is an over-zealous exercise in utter disregard to the very purpose of the criminal justice system. 13. In view of the above, the impugned order passed by the High Court is set aside and the interim protection granted to the petitioner by this Court on 07.02.2017 is made absolute. This appeal is, accordingly, disposed of.