
(2009) 09 CAL CK 0038
In the Calcutta High Court
Case No : C.R.R. No. 636 of 2009

Sri Sadhan Mondal

APPELLANT

Vs

The State of West Bengal and Another

RESPONDENT

Date of Decision : 02-09-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125, 437, 438
Penal Code, 1860 (IPC) — Section 323, 34, 494, 498A

Citation : (2009) 09 CAL CK 0038

Hon'ble Judges : Ashim Kumar Roy, J

Bench : Single Bench

Advocate : Md. Sarwar Jahan, for the Appellant; Snehasis Jana, for O.P. No. 2, for the Respondent

Judgement

Ashim Kumar Roy, J.—The present petitioner apprehending arrest in connection with Ghatal Police Station Case No. 113 of 2008 under Sections 498A/494/323/34 of the Indian Penal Code moved an application for anticipatory bail before the Learned Sessions Court, Paschim Medinipur when by an order passed on September 8, 2008 the Learned Sessions Judge In-charge, Paschim Medinipur allowed the petitioner's prayer for anticipatory bail subject to payment of maintenance @ Rs. 750/- per month to the wife/opposite party No. 2 till the disposal of the said criminal case against him. It was further directed that the petitioner shall surrender before the Learned Additional Chief Judicial Magistrate, Ghatal and on such surrender the Learned Magistrate shall release him on bail on a bond of Rs. 50/-.

The petitioner in the instant criminal revisional application challenge the imposition of condition of payment of maintenance in granting anticipatory bail.

2. Heard the Learned Lawyers appearing on behalf of the parties. Perused the impugned order as well as the materials on record.

3. It appears from the record that pursuant to the order of granting anticipatory

bail the petitioner has surrendered before the Learned Additional Chief Judicial Magistrate, Ghatal within the stipulated period and has been released on bail. It further appears in terms of the condition of anticipatory bail the petitioner has been paying maintenance to the wife/opposite party.

4. Having regards to the provisions of Section 438 of the Code of Criminal Procedure while passing an order for release of an accused allegedly involved in the commission of any non-bailable offence, the High Court or Sessions Court if thinks fit may impose the following conditions;

(a) The accused shall make himself available for interrogation by a police officer as and when required.

(b) The accused 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.

(c) The accused shall not leave India without the previous permission of the Court.

(d) Such other condition as may be imposed under Sub-section (3) of Section 437 as if the bail was granted under that section.

5. According to Sub-section (3) of Section 437 of the Code the following conditions may also be imposed;

(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.

6. The provisions of Chapter XXXIII of the Code of Criminal Procedure which deals with the matter of bail and anticipatory bail does not contemplate grant of anticipatory bail subject to the condition of payment of maintenance. It is no doubt true that while granting anticipatory bail to an accused the Court making such order may impose condition as provided under Sub-section (3) of Section 438 of the Code of Criminal Procedure, but that does not empower a Court to impose a condition of payment of maintenance. The question of grant of maintenance can only be decided by a competent Court in a proceeding u/s 125 of the Code of Criminal Procedure and that too after recording of evidence of the parties in the manner as provided thereunder. According to the said provisions while Court may direct the husband to pay maintenance to his wife on proof of facts such husband in spite of having sufficient means neglects or refuses to maintain the wife, who is unable to maintain herself, at the same time Court may also decline to pass any order of maintenance if wife is living in adultery or if, without any sufficient reason, refuses to live with her husband or if they are living separately by mutual consent. An order directing payment of maintenance,

as a condition of anticipatory bail, is beyond the scope of power conferred upon a Court u/s 438 of the Code of Criminal Procedure and is wholly illegal. The question of liability of the husband to pay maintenance to his wife must be left to be decided by the competent Court in appropriate proceeding after recording of evidence of the respective parties in support of their respective cases.

7. Since the order of the Learned Sessions Judge granting anticipatory bail to the husband/petitioner on condition of payment of maintenance is absolutely beyond the scope of Section 438 of the Code of Criminal Procedure, the condition of payment of maintenance is set aside. In the result, the instant criminal revisional application succeeds and is accordingly allowed. The order of granting anticipatory bail in question, so far that relates to the direction issued against the husband/petitioner to pay maintenance to the wife/opposite party stands set aside. However, this order will not stop the wife/opposite party to move the appropriate Court against the husband/petitioner for maintenance in accordance with law.

Criminal Section is directed to deliver urgent Photostat certified copy of this Judgement to the parties, if applied for, as early as possible.