2024 INSC 567

Reportable

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No. of 2024
(Arising out of SLP (Crl.) No.2011 of 2024)

Sudeep Chatterjee ...Appellant(s)

Versus

The State of Bihar & Anr. ...Respondent(s)

J U D G M E N T

C.T. RAVIKUMAR, J.

Leave granted.

1. *'Lex non cogit ad impossibilia'* means 'the law does not compel a man to do what he cannot possibly perform'. The said maxim is being followed as an adage and with alacrity. We are constrained to refer to the said maxim on being pained to see that despite a catena of decisions deprecating the practice of putting onerous conditions for pre-arrest bail such orders are being passed without giving due regard to the binding precedents.

2. The case on hand arises from an order dated 30.08.2023 passed by the High Court of Judicature at Patna in Criminal Miscellaneous No.57492 of 2023 whereby and whereunder the High Court granted provisional pre-arrest bail in Complaint Case No.1100 of 2021 registered against the appellant herein, alleging commission of offences punishable under Section 498A of the Indian Penal Code, 1860 (for short 'the IPC') and Section 4 of the Dowry Prohibition Act, 1961.

3. Heard the learned counsel appearing for the appellant, learned counsel appearing for the State and also the learned counsel appearing for the second respondent. The second respondent filed reply affidavit and resisted the prayer for interfering with the conditions put in the impugned order. The counsel for the State endorsed the view and contentions raised on behalf of the second respondent.

4. Complaint Case No.1100 of 2021, produced in this proceeding as Annexure P-1, would reveal that distrust and discordancy among the couple viz., the appellant and the second respondent led to disputes and then divorceable situation. In fact, the appellant moved a petition for dissolution of their marriage before the Court of learned Principal Judge, Family Court, Bhagalpur. Complaint Case No.1100 of 2021 has been filed by the

second respondent-wife alleging commission of the aforesaid offences against the appellant. Earlier, in connection with the aforesaid Complaint Case, the appellant moved an application for pre-arrest bail before the Court of Sessions Judge, Katihar. On its dismissal vide order dated 24.05.2023, the above-mentioned application for an anticipatory bail was moved before the High Court which culminated in the impugned order. The relevant paragraphs in the impugned order that compelled us to make the opening remarks read thus: -

> *"6. Considering the desire of the parties, both the parties are directed to file a joint affidavit before the Court below to the effect that the parties have agreed to live together and petitioner must give specific statement in the said joint affidavit that he undertakes to fulfill all physical as well as financial requirement of the complainant so that she can lead a dignified life without any interference of any of the family members of the petitioner.*
>
> *7. If such affidavit is filed within a period of four weeks, petitioner, above named, is directed to be released on* ***Provisional Bail,*** *in the event of his arrest or surrender before the Court below within a period of four weeks from today, on furnishing*

bail bond of Rs. 10,000/- (Ten Thousand) each with two sureties of the like amount each to the satisfaction of learned C.J.M, Katihar in connection with Complaint Case No.1100 of 2021, subject to the condition as laid down under Section 438(2) of the Cr.P.C.

8. It is made clear that Provisional bail shall continue till four weeks from the date of passing of this order to enable him to file joint affidavit along with withdrawal order of the divorce case."

5. Before scanning the conditions as mentioned above, we think it appropriate to refer to some of the relevant decisions of this Court, in the contextual situation. A Constitution Bench of this Court in ***Shri Gurbakash Singh Sibbia & Ors. v. State of Punjab***[1] held thus: -

"26. We find a great deal of substance in Mr.Tarkunde's submission that since denial of bail amounts to deprivation of personal liberty, the court should lean against the imposition of unnecessary restrictions on the scope of Section 438, especially when no such restrictions have been imposed by the legislature in the terms of that section. Section 438 is a procedural provision

[1] (1980) 2 SCC 565

which is concerned with the personal liberty of the individual, who is entitled to the benefit of the presumption of innocence since he is not, on the date of his application for anticipatory bail, convicted of the offence in respect of which he seeks bail. An over-generous infusion of constraints and conditions which are not to be found in Section 438 can make its provisions constitutionally vulnerable since the right to personal freedom cannot be made to depend on compliance with unreasonable restrictions. The beneficent provision contained in Section 438 must be saved, not jettisoned. No doubt can linger after the decision in Maneka Gandhi [Maneka Gandhi v. Union of India, (1978) 1 SCC 248], that in order to meet the challenge of Article 21 of the Constitution, the procedure established by law for depriving a person of his liberty must be fair, just and reasonable. Section 438, in the form in which it is conceived by the legislature, is open to no exception on the ground that it prescribes a procedure which is unjust or unfair. We ought, at all costs, to avoid throwing it open to a Constitutional challenge by reading words in it which are not to be found therein."

(emphasis supplied)

6. In ***Parvez Noordin Lokhandwalla v. State of Maharashtra & Anr.***[2] this Court held: -

> *"…The human right to dignity and the protection of constitutional safeguards should not become illusory by the imposition of conditions which are disproportionate to the need to secure the presence of the accused, the proper course of investigation and eventually to ensure a fair trial. The conditions which are imposed by the court must bear a proportional relationship to the purpose of imposing the conditions. The nature of the risk which is posed by the grant of permission as sought in this case must be carefully evaluated in each case."*

7. We do not think it necessary to burden this judgment by multiplying the authorities on this subject as the constant and consistent view of this Court on matters granting a prayer for bail under Section 438 of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C.') is that after forming an opinion, taking note of all relevant aspects, that bail is grantable, conditions shall not be put to make it impossible and impracticable

[2] (2020) 10 SCC 77

for the grantee to comply with. As held by this Court in ***Parvez Noordin's*** case (*supra*), the ultimate purpose of putting conditions while granting pre-arrest bail is to secure the presence of the accused and thus, eventually to ensure a fair trial and also for the smooth flow of the investigating process.

8. In view of the unfortunate instances imposing very onerous conditions, especially in cases which are nothing but an off-shoot of matrimonial discordance, we would reiterate the view that courts have to be very cautious in imposing conditions while granting bail upon finding pre-arrest bail to be grantable. This is to be done warily, especially when the couple concerned who are litigating in divorce proceedings, jointly though lukewarmly, agreed to attempt to reconcile and re-unite. The impugned order itself would reveal that the parties who were about to part company, rethought and expressed their readiness to bury the hatchet and to re-unite and the appellant has also agreed to withdraw the divorce case. One should not be oblivious of the fact that a boy or girl, will be bonded to kith and kins besides parents and siblings and such bonded relationships cannot be severed solely due to affine and affinity towards the affinal as also cognate relationships has to be taken forward with same cordialness. Relation

through marriage *sans* support from both the families may not flourish but may perish. Viewed from any angle, putting conditions as has been done in this case, requiring a person to give an affidavit carrying a specific statement in the form of an undertaking that he would fulfil all physical as well as financial requirements of the other spouse so that she could lead a dignified life without interference of any of the family members of the appellant, can only be described as an absolutely improbable and impracticable condition. The second respondent may not misuse such a condition. However, giving such a *carte blanche*, is nothing but making one dominant over the other, which in no way act as a catalyst to create a comely situation in domesticity. On the contrary, such conditions will only be counter-productive. There can be no doubt that a re-union after a marital discord is possible only if the parties are put to a conducive situation to regain the mutual respect, mutual love and affection. No doubt putting a condition that one of the parties should undertake to fulfil all physical as well as financial requirements of the other party could not bring about such a situation. It may compel one among the couple to be susceptive and turn the other supercilious. When the couple who are trying to bridge their emotional differences putting one among

them under such an onerous condition would deprive a dignified life not only to the grantee but to both. It is to be noted that with the said conditions the appellant was granted only a provisional bail. In short, we stress upon the need to put compliable conditions while granting bail, recognizing the human right to live with dignity and with a view to secure the presence of the accused as also unhindered course of investigation, ultimately to ensure a fair trial. In respect of matters relating to matrimonial cases, conditions shall be put in such a way to make the grantee of the bail as also the griever to regain the lost love and affection and to come back to peaceful domesticity. In this case, the parties, obviously, expressed their desire and willingness to live together and in that regard the appellant-husband, expressed his willingness to withdraw the divorce case.

9. The above discussions tend us to hold that the conditions as mentioned above contained in paragraph 6 of the impugned order for the release of the appellant on the provisional bail cannot be sustained and as such the said conditions to give undertaking that the appellant would fulfil all physical and financial requirements by way of an affidavit are set aside. However, this shall not be understood to have an order releasing both of their marital obligations and duties and we hope and trust that

the couple will continue to strive to restore their domesticity.

10. The order granting the bail is made absolute and the appellant in the event of his arrest be released on bail subject to the same terms stipulated by the High Court under the impugned order regarding suretyship as also the liability to comply with conditions as laid down under Section 438(2), Cr. P.C. Needless to say, that this will further be subject to the final outcome of the pending complaint case. The impugned order stands set aside only to the aforesaid extent and accordingly, the appeal stands disposed of.

11. Pending application(s), if any, stands disposed of.

……, J.
(C.T. Ravikumar)

……, J.
(Prashant Kumar Mishra)

New Delhi;
August 02, 2024.