

Criminal Revision
Present: The Hon'ble Justice Ashim Kumar Roy
Judgment On : 05-05-2010.
C.R.R. No. 431 of 2010
Smt. Sakti Rani Dey
versus
The State of West Bengal & Anr.

Points:

Condition of bail: While granting anticipatory bail High Court has not imposed any condition calling upon the petitioner to deposit any part of alleged electricity pilferage amount - whether the Court below can impose such condition in granting bail- Code of Criminal Procedure, 1973 S.437

Facts:

The present petitioner apprehending arrest in connection with Pandua Police Station Case No. 206 of 2009 under Sections 135 (1)(b)/135 (1)(c) of the Electricity Act moved an application for anticipatory bail before this Hon'ble High Court. This Hon'ble High Court allowed such prayer of anticipatory bail during its validity, on January 14, 2010, the petitioner surrendered before the Learned Judge, Special Court under Electricity Act, Hooghly, and prayed for regular bail, when the Learned Judge called for the Case Diary and released the petitioner on interim bail till January 22, 2010. While passing such order, the Learned Judge directed the petitioner to contact the concerned authority and to deposit the amount that may be assessed in the meantime. Thereafter, on January 22, 2010, the Learned Judge further directed the petitioner to deposit a sum of R. 2.5 lakhs in terms of the order passed by this Hon'ble High Court in connection with W.P. No. 597 (W) of 2010.

Held:

When an accused is granted anticipatory bail by the Hon'ble High Court after consideration of the materials available against such accused from the Case Diary and such an accused surrenders in Court, the regular Court is to see from the Case Diary whether there has been any further development in

the case or not, meaning thereby whether apart from the materials against the accused upon consideration of which High Court granted anticipatory bail to him there have been any additional incriminating materials available against the petitioner or not. When it is found there is no further materials apart from those upon consideration of which High Court granted anticipatory bail to an accused it would not be at all just, proper and lawful for the Court below to decline regular bail to such an accused. In the case at hand, while granting anticipatory bail High Court has not imposed any condition calling upon the petitioner to deposit any part of alleged electricity pilferage amount, therefore the question of imposing such a condition by the Court below does not at all arise.

Para-6

Moreover, while a Court in exercise of its power either under Section 439 or under Section 437 of the Code granting bail to an accused it can always impose any condition as prescribed in sub-section (3) of Section 437 of the Code of Criminal Procedure. The whole object behind imposition of such condition is to ensure that accused must be readily available for his trial and must not commit an offence similar to the offence of which he is accused or of the commission of offence he is suspected. To exclude the possibilities of tampering with the evidence and to prevent any misuse of liberty of bail by the accused persons a Court may also put other conditions requiring the accused to attend the police station and not to leave or not to enter any particular area, but while either granting bail or refusing bail a Court has no right to record a finding as to the guilt or innocence of the accused or to determine his civil liability. Here in this case the Learned Court below directed the petitioner to deposit a sum of Rs. 2.5 lakhs in terms of the order passed by this Hon'ble High Court in connection with W.P. No. 597 (W) of 2010 which is his civil liability. The Learned Judge possibly failed to understand that he was considering the question of granting regular bail to an accused pursuant to an order of granting anticipatory bail to the said accused by the Division Bench of this Hon'ble High Court and where the Division Bench never made such an order of payment of any amount of money either provisionally or finally assessed being the alleged pilferage amount. The Court below also misread and misconstrued the order passed by this Court in connection with W.P. No. 597 (W) of 2010, where this Court directed to deposit of the said amount of money as a pre-condition for restoration of electricity and any failure to deposit only entails no restoration and not as a condition for regular bail. According to the provisions of the Electricity Act any final order of assessment as regards to the electricity charges payable by any person for unauthorized used of electricity is an

appellable order. In such circumstance the Learned court below has no jurisdiction to enforce even partly the order of final assessment and thereby called upon the petitioner to deposit a part of the amount finally assessed and as a condition of bail. The question of liability of an accused to pay electricity charge which he allegedly consumed unauthorizedly is a matter to be determined by the appropriate authority in terms of the provisions of the Electricity Act and enforcement of such order also to be made in terms thereof and it is none of the business of the criminal Court to compel him to make such payment at the cost of his liberty of bail. It is always open to a Court to either grant bail or refuse bail upon taking into consideration the evidentiary material collected by the police during investigation, but it is not at all permissible for a Court even after finding, a case for bail has been made out to impose a condition imposition of which is not otherwise permissible in law and more particularly when in connection with such case the accused has been granted anticipatory bail by the High Court without such condition. It may not be out of place to record that this Court has not find from the four-corners of the orders from time to time passed by the Learned Court below that there are additional materials which were not before the High Court while High Court granted anticipatory bail to the accused, justifying refusal of bail to the petitioner. Para-7

For Petitioner : Ms. Sreyashee Biswas
Mr. Sandip Ghosh
For WBSedcl/O.P. No. 2:Mr. Aniket Mitra
For State : Mr. Sandipan Ganguly

The Court:

The present petitioner apprehending arrest in connection with Pandua Police Station Case No. 206 of 2009 under Sections 135 (1)(b)/135 (1)(c) of the

Electricity Act moved an application for anticipatory bail before this Hon'ble High Court. This Hon'ble High Court allowed such prayer of anticipatory bail by making the following orders;

“Accordingly, we direct that in the event of arrest, the petitioner would be admitted on bail upon furnishing sufficient sureties on the following conditions that :-

i) the petitioner shall make herself available for interrogation by the Investigating Agency as and when required.

ii) no direct or indirect threat or any inducement would be made 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.

The petitioner must submit to the jurisdiction of the Regular Court within a period of four weeks.

Upon her surrender before the learned Court below, the learned Magistrate shall consider the prayer for bail of the petitioner on the basis of the materials available against her as on that date without being influenced by the disposal of this application.”

2. Pursuant to the said order and during its validity, on January 14, 2010, the petitioner surrendered before the Learned Judge, Special Court under

Electricity Act, Hooghly, and prayed for regular bail, when the Learned Judge

called for the Case Diary and released the petitioner on interim bail till January

22, 2010. While passing such order, the Learned Judge directed the petitioner to

contact the concerned authority and to deposit the amount that may be assessed

in the meantime. Thereafter, on January 22, 2010, the Learned Judge further directed the petitioner to deposit a sum of R. 2.5 lakhs in terms of the order passed by this Hon'ble High Court in connection with W.P. No. 597 (W) of 2010.

3. Now, the petitioner has challenged the said order of granting of interim bail on the limited point that while passing such order, the Learned Court below has no jurisdiction to direct the petitioner to deposit any amount of

money being the alleged electricity pilferage amount, finally assessed as a condition of bail.

4. Ms. Sreyashee Biswas, the Learned Counsel appearing on behalf of the petitioner vehemently urged that while granting anticipatory bail in connection with the aforesaid order a Division Bench of this Hon'ble High Court

never imposed any condition for payment of any amount of money being the

alleged electricity pilferage amount. She further submitted after passing of the aforesaid order of anticipatory bail, the petitioner received an order passed by the Assessing Officer and Station Manager, Pandua Group Electricity Supply, West Bengal State Electricity Distribution Company Limited, whereby a sum of Rs. 4,93,746/- finally assessed as the amount for unauthorized use of electricity. After receipt of such order the petitioner without filing statutory appeal challenged the said order of final assessment on different grounds in a writ petition being W.P. No. 597 (W) of 2010 before this Hon'ble High Court. When this Hon'ble High Court admitted the said writ petition with a direction for filing affidavit and passed an interim order to the effect that if the petitioner deposits a sum of Rs. 2.5 lakhs together with reconnection charges and meter replacement cost then the respondent authority shall restore the supply of the electricity to the petitioner's premises within 48 hours after receipt of such payment. However, this Hon'ble Court made it clear that the pendency of the said writ 4 petition will not prevent the petitioner to prefer an appeal before the appellate authority in accordance with law. She vehemently urged the order so passed by the writ Court had no connection with this criminal proceedings. According to her direction for deposit of the said amount of money was a condition precedent for restoration of electricity and in the event such deposit is not made at its worst the electricity supply shall not be restored, but that cannot be a ground for non confirming the interim bail of the petitioner granted to her pursuant to an order of anticipatory bail and more particularly when there was no further materials in the Case Diary apart from those considering which a Division Bench of this

Hon'ble Court enlarged her on anticipatory bail.

On the other hand, Mr. Aniket Mitra, the learned advocate appearing on behalf of the West Bengal Electricity Board submitted before this Court that it

is the petitioner who produced the said order in the Court below and accordingly

the Learned Judge has not committed any mistake in directing the petitioner to

deposit the said amount of money. However, Mr. Mitra conceded that no Court

while considering the question of granting bail has no authority to direct an accused to deposit the alleged pilferage amount.

Mr. Sandipan Ganguly, the Learned Counsel appearing for the State also in his usual fairness submitted the condition of deposit of 50% of finally assessed amount being the alleged electricity pilferage amount cannot be directed

to be paid as a condition of bail. More particularly when the Court granting anticipatory bail never imposed such a condition.

5

5. Heard Ms. Sreyashee Biswas, the Learned Counsel for the petitioner, Mr. Aniket Mitra, the Learned Counsel appearing for the West Bengal State Electricity Distribution Company Limited and Mr. Sandipan Ganguly, the Learned Counsel appearing for the State.

6. When an accused is granted anticipatory bail by the Hon'ble High Court after consideration of the materials available against such accused from

the Case Diary and such an accused surrenders in Court, the regular Court is to

see from the Case Diary whether there has been any further development in the

case or not, meaning thereby whether apart from the materials against the accused upon consideration of which High Court granted anticipatory bail to him

there have been any additional incriminating materials available against the petitioner or not. When it is found there is no further materials apart from those

upon consideration of which High Court granted anticipatory bail to an accused

it would not be at all just, proper and lawful for the Court below to decline regular bail to such an accused.

In the case at hand, while granting anticipatory bail High Court has not imposed any condition calling upon the petitioner to deposit any part of alleged electricity pilferage amount, therefore the question of imposing such a condition by the Court below does not at all arise.

7. Moreover, while a Court in exercise of its power either under Section 439 or under Section 437 of the Code granting bail to an accused it can always impose any condition as prescribed in sub-section (3) of Section 437 of the Code of Criminal Procedure. The whole object behind imposition of such condition is

6 to ensure that accused must be readily available for his trial and must not commit an offence similar to the offence of which he is accused or of the commission of offence he is suspected. To exclude the possibilities of tampering with the evidence and to prevent any misuse of liberty of bail by the accused persons a Court may also put other conditions requiring the accused to attend the police station and not to leave or not to enter any particular area, but while either granting bail or refusing bail a Court has no right to record a finding as to the guilt or innocence of the accused or to determine his civil liability. Here in this case the Learned Court below directed the petitioner to deposit a sum of Rs.

2.5 lakhs in terms of the order passed by this Hon'ble High Court in connection with W.P. No. 597 (W) of 2010 which is his civil liability. The Learned Judge possibly failed to understand that he was considering the question of granting regular bail to an accused pursuant to an order of granting anticipatory bail to the said accused by the Division Bench of this Hon'ble High Court and where the Division Bench never made such an order of payment of any amount of money

either provisionally or finally assessed being the alleged pilferage amount.

The

Court below also misread and misconstrued the order passed by this Court in connection with W.P. No. 597 (W) of 2010, where this Court directed to deposit of

the said amount of money as a pre-condition for restoration of electricity and any

failure to deposit only entails no restoration and not as a condition for regular

bail. According to the provisions of the Electricity Act any final order of assessment as regards to the electricity charges payable by any person for unauthorized used of electricity is an appellable order. In such circumstance the

7

Learned court below has no jurisdiction to enforce even partly the order of final

assessment and thereby called upon the petitioner to deposit a part of the amount finally assessed and as a condition of bail. The question of liability of an

accused to pay electricity charge which he allegedly consumed unauthorizedly is

a matter to be determined by the appropriate authority in terms of the provisions

of the Electricity Act and enforcement of such order also to be made in terms

thereof and it is none of the business of the criminal Court to compel him to make such payment at the cost of his liberty of bail. It is always open to a Court

to either grant bail or refuse bail upon taking into consideration the evidentiary

material collected by the police during investigation, but it is not at all permissible for a Court even after finding, a case for bail has been made out to

impose a condition imposition of which is not otherwise permissible in law and

more particularly when in connection with such case the accused has been granted anticipatory bail by the High Court without such condition. It may not

be out of place to record that this Court has not find from the four-corners of the

orders from time to time passed by the Learned Court below that there are additional materials which were not before the High Court while High Court granted anticipatory bail to the accused, justifying refusal of bail to the petitioner.

8. For the reasons stated above, the condition whereby the petitioner was directed by the Learned Court below to pay a sum of Rs. 2.5 lakhs to the West Bengal State Electricity Development Corporation Limited by 15th of May,

2010 as the condition of interim bail stands set aside. The Learned Court below

8

is directed to dispose of the petitioner's prayer for bail finally in accordance with

law and keeping in mind the petitioner has been granted anticipatory bail by this

Hon'ble High Court. The Court shall make necessary order upon consideration of

the Case Diary. The petitioner shall continue on interim bail till the final disposal of his bail application pending in the Court below. The petitioner is further directed to appear in the Court below within a period of six weeks from

this date and the Court below is directed to finally dispose of his application for

bail within two weeks from the date of his appearance in the Court.

This application thus stands allowed.

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

(*Ashim Kumar Roy, J.*)