

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.54100 of 2015

Arising Out of PS.Case No. -338 Year- 2015 Thana -PURNEA SADAR District- PURNIA

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Kunal Prakash son of Late Ved Prakash Gupta, Resident of House No. 153,
Khuskibag, P.S. - Sadar, District – Purnea.

.... Petitioner

Versus

1. The State of Bihar
2. The North Bihar Power Distribution Company Limited, through its Managing
Director, Vidyut Bhawan, Bailey Road, Patna..

.... Opposite Parties

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Appearance :

For the Petitioner	:	M/s. Suraj Samdarshi and Sumit Kumar Jha, Advocates
For North Bihar Power Distribution Company Limited	:	M/s. Vinay Kirti Singh and Akhileshwar Singh, Advocates
For the State	:	Mr. Jharkhandi Upadhyay, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 22-01-2016

By way of the present application under Section 482 of the Code of Criminal Procedure (for short the CrPC), the petitioner Kunal Prakash, has assailed the condition imposed in the order dated 7.10.2015, passed by the learned Sessions Judge, Purnea, in Anticipatory Bail Petition No.1335 of 2015, arising out of Sadar P.S. Case No.338 of 2015, registered under Section 135 of the Indian Electricity Act, 2003.

2. The prosecution story, in brief, is that an inspection was carried out on 4.6.2015, by an inspecting team headed by the Executive Engineer, Electric Supply Division, Purnea of the electrical



meter installed by the South Bihar Power Distribution Company (For short 'the Company') in the premises of M/s Krishna Cold Storage, Khushkibagh, Purnea on 4.6.2015 in which the remote meter reading was found doubtful. Accordingly, the inspection was stopped and in order to conduct further advanced test the meter and the metering unit were sealed. Thereafter, a further inspection was carried out on 5.6.2015, when the authorities came for replacement of the meter. After installation of the new meter, the old meter was removed and sealed for further investigation in presence of the petitioner. It was subsequently sent to the Laboratory at Central Power Research Institute, Bhopal for testing. A notice in this regard was also sent to petitioner. On the date so fixed, no representative of the petitioner appeared, but an Executive Engineer of the Company was present and in the test held between 4.8.2015 and 6.8.2015, it was found that the meter was tampered. It is alleged that there was foreign circuit installed in the metering unit and, therefore, based on such report the present FIR had been instituted alleging loss caused to the Company to the tune of Rs.44,43,883/-.

3. Apprehending his arrest in the aforesaid police case, the petitioner filed an application in the court of Sessions Judge, Purnea under Section 438 of the CrPC seeking bail. After hearing the parties and perusing the record, the learned Sessions Judge, Purnea

granted anticipatory bail to the petitioner vide order dated 7.10.2015.

The operative part of the order dated 7.10.2015 passed by the learned Sessions Judge, Purnea reads as under :-

“ Considering the facts and circumstances of the case, the prayer of anticipatory bail of the petitioner, namely, **Kunal Prakash** is allowed and in the event of arrest or surrender within a fortnight from the date of receipt of this order before the court below or arrest, shall be released on bail on furnishing bail bond of Rs.10,000/- (Ten thousand) with two sureties of like amount each, subject to the conditions as laid down under Section 438(2) of the Cr.P.C. with additional condition that the **petitioner will deposit the remaining due amount before the North Bihar Power Distribution Company Limited within four months failing which his bail bond shall automatically be cancelled**”.

4. The additional condition whereby the petitioner has been directed to deposit the remaining amount is being challenged by the petitioner in the present case.

5. Learned counsel for the petitioner has contended that



the petitioner had approached this Court against the alleged inspection, pursuant to which the electric supply of the petitioner, was disconnected by filing a Civil Writ Petition being C.W.J.C. No.14718 of 2015. In the said writ petition, a Bench of this Court, vide order dated 18.9.2015, directed the licensee to restore the electric supply upon payment of 50% of the loss as alleged by the licensee, in two equal installments. However, the electric supply of the petitioner was directed to be restored upon deposit of the first installment itself.

6. It has been further contended that the petitioner has already deposited the 50% amount as directed by this Court in the C.W.J.C. No.14718 of 2015. However, the learned Sessions Judge, Purnea, vide impugned order dated 7.10.2015, has directed the petitioner to make further payment of 50%, i.e., in addition to the amount already deposited pursuant to the order passed by this Court in the aforesaid writ petition.

7. It is contended that inspection of a condition to deposit the entire amount would amount to inflicting punishment even before commencement of trial. The condition imposed is onerous one and hence, it is illegal. It has been submitted that it would be highly unjust to force a consumer to pay the entire amount as alleged in the FIR without any assessment only on the basis of FIR as a condition precedent for grant of anticipatory bail.



8. On the other hand, learned counsel for the Company has contended that the petitioner has committed a serious offence. The authorities have assessed a huge loss of more than Rs.44 lacs caused to the Company due to theft of electricity committed by the petitioner and in that view of the matter, there is no illegality in the order passed by the learned Sessions Judge, Purnea whereby he has directed the petitioner to deposit the remaining due amount before the Company within four months.

9. I have heard respective counsel for the parties and carefully perused the materials available on record.

10. In the present application, the only point for consideration is whether the condition imposed by the court below for grant of pre-arrest bail is sustainable in law.

11. It would be pertinent to note here that the 41st Report of The Law Commission, dated 24.09.1969, recommended for the first time inclusion of a provision for anticipatory bail. Section 438 of the Code contemplates an application by a person on an apprehension of arrest in regard to the commission of a non-bailable offence, the object being to relieve a person from unnecessary harassment or disgrace and it is granted when the court is otherwise convinced that there is no likelihood of misuse of the liberty granted since he would neither abscond nor take such step so as to avoid due process of law.

Such application has to be filed either to the High Court or to the Court of Sessions for a direction that in the event of his arrest, he shall be released on bail.

12. In order to examine the issue, it is useful to refer Section 438 of the Code, which reads as under:-

“438. Direction for grant of bail to person apprehending arrest.”-(1) Where any person has reason to believe that he may be arrested on accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section that in the event of such arrest he shall be released on bail; and

that Court may, after taking into consideration, *inter alia*, the following factors, namely:- (i) the nature and gravity of the accusation; (ii) the antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence; (iii) the possibility of the applicant to flee from justice; and (iv) where the accusation has been made with the object of



injuring or humiliating the applicant by having him so arrested, either reject the application forthwith or issue an interim order for the grant of anticipatory bail: Provided that, where the High Court or, as the case may be, the Court of Session, has not passed any interim order under this sub-section or has rejected the application for grant of anticipatory bail, it shall be open to an officer incharge of a police station to arrest, without warrant, the applicant on the basis of the accusation apprehended in such application. (1-A) Where the Court grants an interim order under sub-section (1), it shall forthwith cause a notice being not less than seven days notice, together with a copy of such order to be served on the Public Prosecutor and the Superintendent of Police, with a view to give the Public Prosecutor a reasonable opportunity of being heard when the application shall be finally heard by the Court.

(1-B) The present of the applicant seeking anticipatory bail shall be obligatory at the time of final hearing of the application and passing of

final order by the Court, if on an application made to it by the Public Prosecutor, the Court considers such presence necessary in the interest of justice.

(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 thinks 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 incharge 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 sub-section (1).”

13. Sub-section (3) of Section 437 of the Code, inter alia, envisages 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 or the Indian Penal Code (45 of 1860) 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 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, and may also impose, in the interests of justice, such other conditions as it considers necessary.

14. On careful scrutiny of the provisions of sub-section (2) of section 438 and sub-section (3) of Section 437 of the Code, it is clear 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. Any other conditions not specified in the provisions of Section 438 of the Code can also be imposed, but the other conditions which could be imposed must be *ejusdem generis* as the condition specified in Section 438. The discretion of the court while putting condition should be a judicial one.

15. A similar question came up for consideration before the Hon'ble Supreme Court in the matter of **Munish Bhasin and others Vs. State (Government of NCT of Delhi) and Anr.** reported in [(2009) 4 SCC 45]. In the said case, the Hon'ble Supreme Court observed in para 12 to 14 as under:-

“12. 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.

13. 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.

14. 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 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 the 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."

16. In the matter of **Ramathal & Others vs. Inspector of Police and Another** reported in [(2009) 12 SCC 721], the Hon'ble Supreme Court was considering a case in which the High Court had passed an order granting anticipatory bail on condition that in the

event of arrest, the accused persons shall be enlarged on bail on their depositing Rs. 32,00,000/- before the Judicial Magistrate and also on their executing their personal bond of Rs. 1,00,000/- with two sureties each for the like sum to the satisfaction of the Magistrate. In that case after hearing the parties, the Hon'ble Supreme Court ruled as under:-

“13. It appears that in the aforesaid facts and circumstances, the High Court passed the impugned order with the intention of protecting the interest of the complainant in the matter. In our considered opinion, the approach of the High Court was incorrect as under the impugned order a very unreasonable and onerous condition has been laid down by the Court as a condition precedent for grant of anticipatory bail.”

17. In the matter of **Amarjeet Singh vs. State of NCT of Delhi**) reported in [(2009) 13 SCC 769], the Hon'ble Supreme Court held as under:-

“7. Having regard to the facts and circumstances of the present case, we have no hesitation in coming to the conclusion that the imposition of condition to deposit the sum of Rs 15 lakhs in the form of FDR in the trial court is an

unreasonable condition and, therefore, we set aside the said condition as a condition precedent for granting anticipatory bail to the appellant-accused.”

18. Similarly, in the matter of **Sumit Mehta vs. State (NCT of Delhi)** reported in [(2013) 15 SCC 570], the Hon’ble Supreme Court in paras 14 and 15 ruled as under:-

“14. Thus, in the case on hand, fixed deposit of Rs 1,00,00,000 for a period of six months in the name of the complainant and to keep the FDR with the investigating officer as a condition precedent for grant of anticipatory bail is evidently onerous and unreasonable. It must be remembered that the court has not even come to the conclusion whether the allegations made are true or not which can only be ascertained after completion of trial. Certainly, in no words are we suggesting that the power to impose a condition of this nature is totally excluded, even in cases of cheating, electricity pilferage, white-collar crimes or chit fund scams, etc.

15. The words “any condition” used in the provision should not be regarded as conferring



absolute power on a court of law to impose any condition that it chooses to impose. Any condition has to be interpreted as a reasonable condition acceptable in the facts permissible in the circumstance and effective in the pragmatic sense and should not defeat the order of grant of bail. We are of the view that the present facts and circumstances of the case do not warrant such extreme condition to be imposed.”

19. The aforesaid decisions of the Supreme Court give an abundant clarity as to the ambit and scope of sub-section (2) of Section 438 of the Code. The Supreme Court has always frowned on onerous condition being imposed as a condition precedent for granting anticipatory bail.

20. In view of the statutory provision prescribed under CrPC and the principles laid down by the Apex Court, any condition, which has no reference to the fairness and propriety of investigation and trial cannot be imposed by a Court while exercising power conferred under Section 438 of the Code.

21. Thus, in the case on hand, the condition imposed by the learned Sessions Judge, Purnea for grant of anticipatory bail to the petitioner cannot be upheld. It is not disclosed from the impugned



order that the learned Sessions Judge considered the entire facts of the case in proper perspective and proceeded to dispose of the prayer for anticipatory bail unmindful of the facts of the case and contrary to the legal position with regard to law relating to grant of anticipatory bail. The learned Sessions Judge, Purnea should have considered the entire facts of the case including the nature of the offence alleged and in the light thereof should have considered the prayer for grant of anticipatory bail.

22. In view of the aforesaid discussions, the petition succeeds. I am of the opinion that the entire order passed by the learned Sessions Judge, Purnea deserves to be set aside. I, accordingly, set aside the impugned order dated 7.10.2015, passed in A.B.P. No.1335 of 2015, arising out of Sadar P.S. Case No.338 of 2015 and remand the matter to the learned Sessions Judge, Purnea to consider the prayer for anticipatory bail of the petitioner afresh in accordance with law taking into consideration the facts and circumstances of the case including the nature of the offence alleged.

23. The learned Sessions Judge, Purnea is requested to dispose of the aforesaid A.B.P. No.1335 of 2015, giving reason for his decision as expeditiously as possible, preferably within a period of three weeks from the date of receipt/communication of the order.

24. Let it be noted that this Court has not examined the

merits of the prosecution case. The learned Sessions Judge would be free to pass such order as he deems fit and proper on the facts and in the circumstances of the case after looking into the record and hearing arguments advanced on behalf of the parties.

25. With these observations, the application stands allowed.

(Ashwani Kumar Singh, J)

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