

23.08.2022
Serial no.41 & 51
Dd

CRAN 1 of 2022
in
CRM 6517 of 2018

In Re : CRAN 1 of 2022

(An application for relaxation and/or modification and/or
waiving of condition of Anticipatory bail)

In the matter of : Chirajit Chaudhuri

... .. Petitioner

with

CRM (DB) 2724 of 2022

In re : Indrani Choudhury

... ..Petitioner

In re : An Application under Section 439(2) of the Code of Criminal
Procedure, 1973 for cancellation of Anticipatory Bail.

Mr. K. J. Tewari,

Mr. Debasis Ghosh, Advocates

... .. For the Petitioner in CRAN 1 of 2022 in
CRM 6517 of 2018

Mr. Asimes Goswami,

Ms. Paulomi Banerjee, Advocates

... ..For the petitioner in CRM (DB) 2724 of 2022

Mr. Joydeep Roy, Jr. Govt. Advocate

Ms. Sujata Das, Advocates

... ..For the State

Two applications are taken up for consideration
analogously.

One application is for relaxation of the condition of
anticipatory bail granted being CRAN 1 of 2022 in CRM 6517 of
2018 and the other is CRM (DB) 2724 of 2022 which is for
cancellation of anticipatory bail granted.

The conduct of the person enlarged on anticipatory
bail requires consideration.

The anticipatory bail granted by the coordinate Bench on August 24, 2018 was on condition that the husband would be paying maintenance to his wife. The coordinate Bench while enlarging the husband on anticipatory bail noted that the husband was given to assaulting his wife and child regularly under influence of liquor. Moreover, he drove out the wife and child. Since the husband drove out the wife and the child maintenance was directed to be given.

Maintenance in terms of the order dated August 24, 2018 was paid up to a particular period and, thereafter, not paid. The justification of non-payment is that such a condition cannot be imposed in view of the judgment of the Supreme Court reported in **(2009) 4 SCC 45 [Munish Bhasin & Ors. vs. State (Government of NCT of Delhi) & Anr.]**. The same is the ground for seeking waiver of such condition of the order granting anticipatory bail.

Payment of maintenance was made one of the conditions precedent for the grant of anticipatory bail to the husband.

None of the parties carried any special leave against the order granting anticipatory bail to the husband.

Munish Bhasin (Supra) is of the view that while exercising discretion to release an accused under Section 438 of the Code of Criminal Procedure neither the High Court nor the Sessions Court would be justified in imposing freakish conditions. Their Lordship, however, observed that there is no manner of doubt 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. The accused should not be subjected to any irrelevant condition at all.

The observations made by the Supreme Court in **Munish Bhasin (supra)** was on an appeal from the order granting anticipatory bail. In the facts of that case, the wife

was found to be employed and receiving handsome salary. Such is not the case here.

In the present case, as noted above, none of the parties preferred any appeal before the Supreme Court with regard to the conditions granting anticipatory bail. The parties accepted such condition and acted thereon. The accused did not approach Court to waive the condition of payment of maintenance prior to stopping the payment. The accused acted unilaterally and acted in violation of the order granting anticipatory bail. **Munish Bhasin (supra)** cannot be read to mean that an accused enlarged on anticipatory bail is entitled to flout a condition of the order of grant of anticipatory bail.

In such circumstances, since the accused did not comply with the conditions of order granting anticipatory bail by the order dated August 24, 2018 is concerned, the application for relaxation of the conditions of granting anticipatory bail does not arise.

CRAN 1 of 2022 in CRM 6517 of 2018 is **disposed of** accordingly.

So far as the application for cancellation of anticipatory bail being CRM (DB) 2724 of 2022 is concerned, learned advocate appearing for the accused seeks two weeks time to file affidavit, since it is appearing for the first time. Such prayer being reasonable is accepted.

Let, affidavit-in-opposition be filed two weeks; reply thereto be filed a weeks thereafter.

List the application for cancellation of anticipatory bail four weeks hence.

(Debangsu Basak, J.)

(Bibhas Ranjan De, J.)