

Form No. J(2)

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Jay Sengupta

CRR 4 of 2021

With
CRAN 1 of 2021
CRAN 2 of 2021

Abhilasha Rajgarhia
Vs.
State of W.B. & anr.

For the Petitioner : Mr. Sabyasachi Banerjee
: Ms. Shrestha Bhattacharjee
: Mr. N. Chakraborty

For the State : Mr. Prasun Kumar Datta, Ld. APP
: Mr. Imran Ali
: Mr. Md. Kutubuddin

For the O.P. : Mr. Sourav Chatterjee
: Mr. Soumya Nag
: Mr. Souvik Nandy

Heard on: 5th March, 2021

Judgment on : 5th March, 2021

The Court:

This is an application praying for modification or setting aside of an implicit liberty granted by the learned trial Court to the accused that he shall submit his address if he was to leave India.

Learned counsel appearing on behalf of the petitioner submits as follows. The husband/opposite party no.2 tortured the wife/petitioner and drove her out of their home in the US. The petitioner was compelled to take refuge at her parental home in India. The petitioner started a case under Sections 406 and 498A read with Section 34 of the Penal Code and Sections 3 and 4 of the Dowry Prohibition Act against the husband/opposite party no.2 and others and the same is being investigated. After about a year, he came to India because he had to renew his visa. The opposite party no.2 was granted anticipatory bail by the learned Sessions Court by an order dated 18.12.2020, inter alia, subject to the compliance of provisions of Section 438 (2) of the Code. Clause (iii) of that provision requires that the accused cannot go outside India without the prior permission of the Court. On the first day that the petitioner appeared before the learned Magistrate after obtaining anticipatory bail, he was released on bail subject to the compliance of provisions of Section 438 (2) of the Code. However, only a few days thereafter i.e., on 2nd January, 2021,

the learned Magistrate was pleased to release the passport of the opposite party no.2 to him, inter alia, on a condition that if he was to leave India, he would have to submit his address to the Investigating Officer. The learned Magistrate has effectively modified the condition imposed by the learned Sessions Judge while granting anticipatory bail to the opposite party no.2 and that too only a few days after the passing of such order. The opposite party no.2 has his hearth and home in the USA and would be able to avoid the due process of Court if he was allowed to travel outside India. In any event, as per the condition imposed, the opposite party no.2 ought to apply before the learned Court granting anticipatory bail for a permission to go abroad.

Learned counsel appearing on behalf of the State submits that the learned Magistrate ought not to have indirectly permitted the opposite party no.2 to go abroad despite the restriction imposed by the learned Sessions Court, that too only a few days after the imposition of such condition.

Learned counsel appearing on behalf of the opposite party no.2 submits as follows. The impugned order passed by the learned Magistrate was passed on consent of both the parties and the Investigating Officer. Therefore, the petitioner cannot resile from such stand and challenge the order before this

Court. It is also wrong to say that the husband has his hearth and home in the USA. His roots are in India and he has his parents here who have their properties and businesses in India. The husband is employed in the US. The employer in the US has given a ultimatum that the husband/opposite party has to return back to the US immediately if he wanted to keep his job. In the event the disputed part of the impugned order is set aside, the husband may be permitted to make an appropriate application before the learned Magistrate. While granting bail to the husband, the learned Magistrate only borrowed a condition from Section 438 (2) of the Code. It may be appropriate for the husband to make an application before the learned Magistrate for relaxation of the condition and for travelling abroad.

Learned counsel appearing on behalf of the petitioner, in reply, submits as follows. The consent that was given before the learned Magistrate was about the return of the passport. Law requires that passport of a person is to be returned to him. It can only be impounded by the competent authorities. That is why the consent was given. It was never contemplated that after given of the consent, the learned Magistrate would travel beyond the same and record that the petitioner could go abroad after giving the address to the Investigating Agency.

Moreover, in the vacating application, the husband was not able to provide any document regarding his roots in India. While granting bail, the learned Magistrate categorically recorded that the accused had to comply with the condition containing under Section 438(2) of the Code. Therefore, if an application had to be made for going abroad that should be filed before the learned Sessions Court. It is pertinent to mention that the petitioner has also filed an application for cancellation of anticipatory bail before this Court. However, no notice for the said application has been served upon the opposite party no.2.

I have heard the submissions of the learned counsels appearing on behalf of the parties and have perused the revision petition, the vacating application and the affidavits filed in this case.

The learned Magistrate had imposed the same condition as contained in Section 438 (2) of the Code and as imposed by the learned Session Court while granting anticipatory bail to the opposite party no.2. However, there is nothing on record to show that the petitioner had approached for permission to go abroad. In spite of this, only a few days later while releasing the passport in his favour, the learned Magistrate implicitly granted a liberty that if the opposite party no.2 was to leave

India, he would have to submit his address to the Investigating Officer.

Even though a consent was given by the petitioner for the return of the passport, it could not be read that she consented to the petitioner going abroad. Therefore, that part of the order passed by the learned Magistrate, where he directed that the husband could go abroad after submitting his address to the Investigating Officer was not passed on consent.

Since the bail granted to the husband by the learned Magistrate was subject to the compliance of the provisions of Section 438 (2) of the Code, it was required that an appropriate application be made for such relief. This issue of going abroad ought to have been decided on merits.

In view of the above, the impugned order dated 02.01.2021 passed by the learned Magistrate is modified and the liberty that the husband had to submit his address if he wanted to leave India is set aside.

The order of anticipatory bail has merged into the order granting bail. However, the conditions imposed by a learned Magistrate while granting bail can always be modified by the learned Sessions Court in exercise of powers under Section 439 (1)(b) of the Code. Therefore, the opposite party no.2 shall be at liberty to apply for further modification of the order or for

going abroad by filing an appropriate application before the learned Sessions Court, Alipore, South 24 Parganas, which had initially imposed such condition.

In the event such an application is filed, the learned Sessions Court shall not be swayed by any observation made by this Court while deciding the revision.

With these observations, the revisional application and the connected applications are disposed of.

Urgent photostat certified copies of this order may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(Jay Sengupta,J.)