

01.08.2025
Court No.13
Item No.13
AP

FMA 900 of 2023
With
CAN 1 of 2023
With
CAN 2 of 2025

Samir Kumar Halder
Vs.
The State of West Bengal and Ors.

Mr. Biswaroop Bhattacharya
Mr. Himangshu Ghosh

... For the Appellant.

Mr. Lalit Mohan Mahata, A.G.P.
Mr. Prasanta Behari Mahata

... For the State.

Re.: CAN 1 of 2023

1. CAN 1 of 2023 has been filed seeking condonation of delay of 51 days in filing stay application along with the memorandum of appeal.

2. Sufficient grounds have been made out in the instant application explaining such delay. Hence, the delay is condoned.

3. Accordingly, CAN 1 of 2023 is allowed and disposed of.

Re.: FMA 900 of 2023
With
CAN 2 of 2025

4. The appeal is directed against a judgement and order dated 10th May, 2023 passed by a Single Bench of this Court. The writ petition was filed by the appellant Samir Kumar Halder against the State of West Bengal

(incorrectly mentioned as “The State Bank of India and Ors.” in the cause title of the certified copy of the order).

5. The facts of the case are that the appellant applied for the post of ‘Sahayak’ in the Abujhali I Gram Panchayat under the Bardhaman Zilla Parishad pursuant to an employment notification. In the application against Column No.14 which required disclosure as if the writ petitioner/appellant was arrested, detained or convicted by a Court for any offence, the writ petitioner replied with the answer “No”.

6. Admittedly, the writ petitioner/appellant was an accused in Memari Police Station Case No.18 of 2006 dated 30th January, 2006 under Sections 420/417/493/376 of the Indian Penal Code. The writ petitioner before filling up the application for employment in the post of ‘Sahayak’, obtained anticipatory bail on 18th February, 2006 and he was granted regular bail on 20th February, 2006.

7. Finding that the appellant had suppressed material facts, the service of the writ petitioner/appellant was terminated.

8. Mr. Bhattacharya, learned counsel for the appellant/writ petitioner would argue before this Court that a plain reading and literal interpretation of the query against the Column No.-14 would indicate that the writ petitioner/appellant was neither arrested nor

detained or actually convicted by a Court. In fact, the records indicate that by a judgement and/or order dated 30th November, 2011 the Court of the Additional Sessions Judge, Fast Tract 2nd Court, Bardhaman has acquitted the appellant/writ petitioner in ST 1(12)09/SC 144/2008.

9. Mr. Bhattacharya, therefore, argues that the appellant/writ petitioner applied after consulting lawyers and based on a communication from the Memari Police Station dated 9th September, 2013 his client cannot be accused of suppression of material facts in his application for employment. He, therefore, submits that the Single Bench has committed error in holding that the writ petitioner has suppressed any material fact and rejecting the writ petition.

10. This Court has carefully considered the arguments of Mr. Bhattacharya, learned counsel for the appellant/writ petitioner and Mr. Mahata, learned counsel for the State/respondents.

11. It appears from the impugned order that the reliance was placed by the Single Bench on a decision of a coordinate Bench of this Court in the case of ***Kakon Kumar Roy Vs. State of West Bengal and Ors.*** particularly paragraph 9 thereof reported in **2007 (3) L.L.N. 792**. In the said judgement a coordinate Bench of this Court held that once anticipatory bail is given, the writ petitioner must be deemed under the detention of a

Court and, therefore, the negative answer to the question in Column No.14 in the question form amounted to a suppression of material facts. Question 14 in the instant case is a *pari materia* with question 13 in the decision of ***Kakon Kumar Roy (supra)***.

12. It is now well-settled that a person on anticipatory bail, irrespective whether he applies for regular bail or not, is on restricted liberty. He is also deemed to have knowledge of the fact that he is an accused in a criminal proceeding and there is likelihood of his arrest.

13. Hence, the suppression of the pendency of the aforesaid proceeding and the restricted liberty being enjoyed by the appellant before the employer, would amount to a suppression of material facts. The employer is required to know, all circumstances, in which the applicant before it is under, to prepare for any eventuality or consequences that would be occasioned to the appellant/employee. The mere disclosure of pendency of criminal proceedings against an employee cannot be a ground for denying him employment.

14. If, in fact, employment were denied based on the disclosure, the writ petitioner/appellant would have a cause of action to challenge such denial. From the facts of the instant case, it is apparent and clear that the writ petitioner carried the impression that if he disclosed the aforesaid fact, he would not be given employment.

15. Be that as it may, the fact remains that the employer was not informed of facts required to be informed to it by the appellant/employee at the time of entry into employment.

16. There is, therefore, suppression of material facts by the appellant in his application for employment which entitled the employer to terminate his employment.

17. In the backdrop of the above discussion, this Court finds no reason to interfere with the impugned order.

18. Hence, FMA 900 of 2023 fails and is hereby dismissed. Consequently, CAN 2 of 2025 is also dismissed.

19. There shall be no order as to costs.

20. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Ajay Kumar Gupta, J.)