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MUNISH BHASIN & ORS.

v.

STATE (GOVT. OF N.C.T. OF DELHI) & ANR.

Criminal Appeal No. 344 of 2009

FEBRUARY 20, 2009

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[R.V. RAVEENDRAN AND J.M. PANCHAL, JJ.]

Code of Criminal Procedure, 1973 :

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s. 438 – Anticipatory bail – Grant of – Complaint by wife u/s. 498A and s.406 r/w s.34 IPC against husband and his parents – Application for anticipatory bail – Grant of, by High Court, directing the husband to pay maintenance (both past and future) to his wife and child – Justification of – Held: Not justified – High Court or Sessions court cannot impose freakish conditions – It can impose conditions stated in s. 438 (2) and 437(3) – Any other condition would be beyond jurisdiction of the power conferred u/s. 438 – Thus, direction issued requiring the husband to pay maintenance (both past and future) to his wife and child set aside.

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The question which arose for consideration in this appeal was whether High Court was justified in imposing condition requiring the appellant to pay a sum of Rs. 12,500/- as maintenance (both past and future) to his wife and child while granting anticipatory bail to him and his parents with reference to the complaint filed by his wife for alleged commission of offences punishable under ss. 498A and 406 read with s. 34 IPC.

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Disposing of the appeal, the Court

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HELD: 1. While exercising discretion to release an accused under Section 438 of the Code of Criminal Procedure, 1973 neither the High Court nor the Session Court would be justified in imposing freakish conditions. The Court having regard to the facts and circumstances

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of the case can impose necessary, just and efficacious conditions while enlarging an accused on bail under Section 438 of the Code. However, the accused cannot be subjected to any irrelevant condition at all. The conditions which can be imposed by the Court while granting anticipatory bail are enumerated in sub-section (2) of Section 438 and sub-section (3) of Section 437 of the Code. Normally, conditions can be imposed (i) to secure the presence of the accused before the investigating officer or before the Court, (ii) to prevent him from fleeing the course of justice, (iii) to prevent him from tampering with the evidence or to prevent him from inducing or intimidating the witnesses so as to dissuade them from disclosing the facts before the police or Court or (iv) restricting the movements of the accused in a particular area or locality or to maintain law and order etc. To subject an accused to any other condition would be beyond jurisdiction of the power conferred on Court under section 438 of the Code. 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. 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. [Para 8] [811-E; 812-A]

2. In the instant case, 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. The case of the appellant is that his wife is employed and receiving a handsome salary and

- A 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
- B 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 appropriate Court for grant of
- C 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
- D month as maintenance (both past and future) to his wife and child is onerous, unwarranted and is set aside. Rest of the directions contained in the said order are maintained. [Paras 8 and 9] [812-D; 813-A; 813-B]

- E CRIMINALAPPELLATE JURISDICTION : Criminal Appeal No. 344 of 2009

From the Judgement and Order dated 07.08.2007 of the High Court of Delhi in Bail Appln. No. 423 of 07.

Kiran Suri, for the Appellant.

- F Madhumita Bhattacharjee, for the Respondent.

The Judgement of the Court was delivered by

J.M. PANCHAL, J.

- G 1. Leave granted. The complainant (wife of first appellant) to whom notice was ordered on 25.01.2008 is impleaded as second respondent.

2. Heard Counsel.

- H 3. The appellant (accused no. 1) assails the condition

imposed by the High Court requiring him to pay a sum of Rs. 12,500/- as maintenance to his wife and child while granting anticipatory bail to him and his parents with reference to the complaint filed by his wife for alleged commission of offences punishable under Sections 498A and 406 read with Section 34 of the Indian Penal Code.

4. The marriage of the appellant was solemnized with Ms. Renuka on December 05, 2004. She has filed a complaint in November 2006, against the appellant and his parents for alleged commission of offences punishable under Sections 498A and 406 read with Section 34 of the Penal Code on the grounds that after marriage she was subjected to mental and physical cruelty for bringing less dowry and that her stri-dhan entrusted to them has been dishonestly misappropriated by them.

5. Apprehending arrest, the appellant and his parents moved High Court of Delhi for anticipatory bail. The application came up for consideration before a Learned Single Judge of the High Court on 22.02.2007. The Learned Additional Public Prosecutor accepted notice and submitted that the matter was essentially a matrimonial dispute and therefore the parties should be referred to the Mediation and Conciliation Cell of the Delhi High Court. The Learned Judge agreed with the suggestion made by the Additional Public Prosecutor and directed the parties to appear before the Mediation and Conciliation Cell of the Delhi High Court on March 02, 2007. The case was ordered to be listed on 10.05.2007. The Learned Judge further directed that in the event of arrest of the appellant and his parents, before the next date of hearing, they shall be released on bail on their furnishing personal bond in the sum of Rs. 25,000/- each with one surety of like amount to the satisfaction of the Investigating Officer/ Arresting Officer concerned, subject however, to the condition that the appellant and his parents shall surrender their passports to the Investigating Officer and shall file affidavits in the Court that they would not leave the country without prior permission of the Court.

A 6. From the records, it appears that the conciliation
proceedings failed and therefore the bail application was taken
up for hearing on merits. On representation made by the wife of
the appellant, the counsel of the appellant was directed to
produce appellant's salary slip. Accordingly, the salary slip of
B the appellant was produced before the Court which indicated
that the appellant was drawing gross salary of Rs.41,598/- and
after deductions of advance tax etc., his net salary was
Rs.33,000/-. The Learned Single Judge of the High Court took
the notice of the fact that the appellant had the duty to maintain
C his wife and the child and therefore as a condition for grant of
anticipatory bail, directed the appellant, by the order dated
07.08.2007 to pay a sum of Rs.12,500/- per month by way of
maintenance to his wife and child. The Learned Single Judge
also directed to pay arrears at the rate of Rs. 12,500/- per month
D from August 2005, that is Rs. 3,00,000/- within six months. The
imposition of these conditions for grant of anticipatory bail is
the subject matter of challenge in the instant appeal.

7. From the perusal of the provisions of sub-section (2) of
section 438, it is evident that when the High Court or the Court
E of Session makes a direction under sub-section (1) to release
an accused alleged to have committed non-bailable offence,
the Court may include such conditions in such direction in the
light of the facts of the particular case, as it may think fit, including
F (i) a condition that a person shall make himself available for
interrogation by 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
G that the person shall not leave India without the previous
permission of the Court and (iv) such other conditions as may
be imposed under sub-section (3) of section 437, as if the bail
were granted under that section. Sub-section (3) of Section 437,
inter alia, provides that when a person accused or suspected
H 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 of the Indian Penal Code 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 following conditions-

- (a) that such person shall attend in accordance with the conditions of the bond executed under this Chapter, B
- (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
- (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. D

The Court may also impose, in the interests of justice, such other conditions as it considers necessary.

8. It is well settled that while exercising discretion to release an accused under Section 438 of the Code neither the High Court nor the Session Court would be justified in imposing freakish conditions. 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 under Section 438 of the Code. However, the accused cannot be subjected to any irrelevant condition at all. The conditions which can be imposed by the Court while granting anticipatory bail are enumerated in sub-section (2) of Section 438 and sub-section (3) of Section 437 of the Code. Normally, conditions can be imposed (i) to secure the presence of the accused before the investigating officer or before the Court, (ii) to prevent him from fleeing the course of justice, (iii) to prevent him from tampering with the evidence or to prevent him from inducing or intimidating the witnesses so as to dissuade them from disclosing the facts before the police

- A or Court or (iv) restricting the movements of the accused in a particular area or locality or to maintain law and order etc. To subject an accused to any other condition would be beyond jurisdiction of the power conferred on Court under section 438 of the Code. While imposing conditions on an accused who
- B 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
- C 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. 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
- D 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
- E would not be justified in awarding maintenance to the wife and child. 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
- F 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
- G instant case indicates that the wife of the appellant has already approached 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
- H 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 A
is onerous, unwarranted and is liable to be set aside.

9. For the foregoing reasons, the appeal succeeds. The
direction contained in order dated August 07, 2007 rendered
by Learned Single Judge of Delhi High Court in Bail Application B
No. 423 of 2007 requiring the appellant to pay a sum of
Rs.12,500/- per month by way of maintenance (both past and
future) to his wife and child is hereby deleted. Rest of the
directions contained in the said order are maintained. It is C
however clarified that any amount received by the wife of the
appellant pursuant to the order of the High Court need not be
refunded by her to the appellant and will be adjusted subject to
the result of application for maintenance filed by wife of the
appellant under Section 125 of the Code before the appropriate
Court.

10. The Appeal is accordingly disposed of.

N.J.

Appeal disposed of.