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SUBRATA ROY SAHARA

v.

PRAMOD KUMAR SAINI & ORS.

(Criminal Appeal Nos. 955-956 of 2022)

B

JULY 14, 2022

**[A. M. KHANWILKAR AND J. B. PARDIWALA, JJ.]**

*Code of Criminal Procedure, 1973: s. 438 – Anticipatory bail – Application under – Scope of – Held: Is limited to the cause of the concerned applicant, applying for grant of anticipatory bail in connection with offence already registered against him and apprehending his arrest in connection with such a case – Inquiry must be limited to the facts relevant and applicable to the concerned applicant who has come before the Court – No attempt should be made to inquire into matters pertaining to some third party much less beyond the scope of the complaint/FIR – High Court should exercise circumspection in dealing with the application only in respect of matters which are relevant to decide the application and not to over-state facts or other matters unrelated to the applicant before the Court – In the instant case, the order passed by the High Court keeping the application for anticipatory bail pending and issuing notice to third parties to appear before the Court, is impermissible – High Court exceeded its jurisdiction – Such a plea, if accepted, is fraught with the danger of allowing Sessions Court/High Court to transcend beyond the scope of application u/s. 438 – Thus, it was not open to the High Court in exercise of powers u/s. 438 to add third parties to the proceedings, who are neither necessary nor proper parties to the application.*

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal Nos. 955-956 of 2022.

From the Judgment and Orders dated 11.02.2022 and 27.04.2022 of the High Court of Judicature at Patna in Criminal Miscellaneous No. 8063 of 2021.

Kapil Sibal, Sr. Advs., Gautam Awasthi, Ayush Choudhary, Nizam Pasha, Gautam Talukdar, Devanshu Yadav, Sameer Pandey, Rahul Tripathi, Ram Sajan Yadav, Vijay Kumar, Advs. for the Appellant.

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K. V. Vishwanathan, Sr. Adv., Manish Kumar, Nitesh Bhandari, A  
Prabhat Kumar Rai, Shourajeet Chakravarty, Ms. Aprajita Bhardwaj,  
Naveen Kumar, Ramesh Babu M. R., Ms. Manisha Singh, Ms. Nisha  
Sharma, Advs. for the Respondents.

The following Order of the Court was passed:

**ORDER**

1. Leave granted.

2. These appeals take exception to the judgment and orders dated  
11.02.2022 and 27.04.2022 passed by the High Court of Judicature at  
Patna in CRLM No. 8063/2021.

3. By these orders, the High Court while entertaining the application  
for grant of anticipatory bail filed by one Pramod Kumar Saini and other  
co-accused named in Complaint Case No. 1761 of 2016 went on to  
inquire into matters unrelated to the facts relevant for deciding the  
anticipatory bail application.

4. This Court vide order dated 13.05.2022, whilst issuing notice,  
observed thus: -

“Permission to file special leave petition(s) is granted.

It is urged that the private complaint filed by one Naresh  
Kumar Das, being Complaint Case No.1761/2016, is against  
accused persons named therein. The petitioner has not been named  
as an accused.

Further, the impugned order has been passed against the  
petitioner on an application for anticipatory bail filed by Pramod  
Kumar Saini, who has been named as accused no.4.

Issue notice, returnable on 19.05.2022.

Dasti, in addition, is permitted.

Stay of operation of the impugned judgment and order qua  
the petitioner herein.

We are informed that pursuant to the impugned order, the  
High Court has issued further orders today, i.e. 13.05.2022, which  
has the effect of directing the concerned authority in Patna (police)  
to produce the petitioner before the Court.

A In terms of this order, we stay the operation of the direction given by the High Court qua the petitioner till 2 the next date of hearing.

All concerned to act on this order forthwith until further hearing of this matter.”

B 5. Needless to observe that the application under Section 438 of the Code of Criminal Procedure is limited to the cause of the concerned applicant, applying for grant of anticipatory bail in connection with offence already registered against him and apprehending his arrest in connection with such a case for extraneous reasons or otherwise. In such proceedings, the inquiry must be limited to the facts relevant and applicable to the concerned applicant who has come before the Court. No attempt should be made to inquire into matters pertaining to some third party much less beyond the scope of the complaint/FIR in question.

D 6. Even if the application is entertained by the High Court, the High Court should exercise circumspection in dealing with the application only in respect of matters which are relevant to decide the application and not to over-state facts or other matters unrelated to the applicant before the Court.

E 7. In the present case, we have noticed that the High Court kept the application for grant of anticipatory bail pending and issued directions, including to issue notice to third parties to appear before the Court. That, in our opinion, is impermissible and cannot be countenanced.

8. The High Court has clearly exceeded its jurisdiction in that regard.

F 9. Accordingly, all the observations or notings made by the High Court in respect of matters unrelated to the case of the applicant before the High Court must stand effaced from the record, in law. The same cannot be looked at or relied upon in some other proceedings against the third parties.

G 10. Learned counsel for the State was at pains to persuade us that since the High Court is taking a broader view of the matter and wants to inquire into certain aspects, it was open to the High Court to do so.

11. We do not agree with this submission at all.

H 12. Such a plea, if accepted, is fraught with the danger of allowing Sessions Court/High Court to transcend beyond the scope of application

under Section 438 Cr.P.C. and the matters relevant to be decided by the Court. A

13. We hold that it is not open to the High Court in exercise of powers under Section 438 Cr.P.C. to add third parties to the proceedings, as if it is invoking powers under Order 1 Rule 10 of Code of Civil Procedure much less those parties who are neither necessary nor proper parties to the application under consideration. B

14. Accordingly, we set aside the impugned judgment and order. However, we clarify that we are not expressing any opinion either way on the correctness of the observations made by the High Court in the impugned judgment and order with regard to matters unrelated to the applicant before the High Court. The State is free to take recourse to such remedy as may be permissible in law in regard to stated matters. C

15. The appeals are disposed of in the above terms.

16. Pending applications, if any, stand disposed of. D

Nidhi Jain

Appeals disposed of.