

Snigdha Ghosh Roy vs Unknown on 22 November, 2022

Author: Debangsu Basak

Bench: Debangsu Basak

22.11.2022 Serial no.37 & 38 Alope CRM (DB) 2402 of 2022 In re : An Application under Section 439(2) of the Code of Criminal Procedure.

-And-

In the matter of : Snigdha Ghosh Roy Petitioner with IA No. CRAN 1 of 2022 In CRM (A) 1931 of 2022 In the matter of : Indranil Roy Petitioner Mr. Abjijit Ganguly, Advocate ... For the Petitioner in CRM (DB) 2402 of 2022 Mr. Kunal Ganguly, Advocate Mr. Tirthankar Mukherjee, Advocate Ms. Madhurima Sarkar, Advocate Mr. Munshi Ashiq Elahi, Advocate Ms. Sucheta Pal, AdvocateFor the petitioner Mr. Debabrata Chatterjee, Id. APP Ms. Debjani Dasgupta, Advocate For the State in CRM (DB) 2402 of 2022 Mr. Debabrata Chatterjee, Id. APP Mr. Santanu Chatterjee, Advocate For the State in CRM (A) 1931 of 2022 The husband was enlarged on anticipatory bail by an order dated April 28, 2022 passed in CRM (A) 1931 of 2022.

In such order, the submission made on behalf of the petitioner that, the petitioner was ready and willing to maintain his wife and child and pay a sum of Rs.30,000/- (Rupees thirty thousand) commencing from the month of June, 2021 till such time the quantum of maintenance is fixed by the appropriate forum, was placed on record. Such contention of the petitioner was one of the grounds for grant of anticipatory bail to the husband.

The husband did not comply with such submissions as recorded in the order dated April 28, 2022. The husband did not pay any amount to the de facto complainant at all subsequent to the husband being enlarged on anticipatory bail on April 28, 2022.

The de facto complainant filed an application being CRM (DB) 2402 of 2022 for cancellation of the anticipatory bail granted on April 28, 2022.

The principal ground of cancellation is non-compliance of promise of payment of maintenance.

The husband applied by way of IA No. CRAN 1 of 2022 seeking modification of the order dated April 28, 2022. The husband seeks exoneration from the liability of paying maintenance to the de facto complainant.

The principal grounds for exoneration are that a proceeding under the Domestic Violence Act is pending where the quantum is yet to be fixed and the other is the financial hardship of the husband.

In such circumstances, it would be appropriate to take up the application for modification first.

As noted above, two primary grounds are canvassed for the purpose of modification of the order dated April 28, 2022 granting anticipatory bail to the husband.

One of the grounds is the pendency of the proceedings under the Domestic Violence Act. No doubt, proceedings under the Domestic Violence Act are pending between the de facto complainant and the husband. The factum of pendency of such proceedings was noted on April 28, 2022 when the husband was granted anticipatory bail. Despite the pendency of such proceedings, the husband volunteered on April 28, 2022 to pay maintenance of Rs.30,000/- (Rupees thirty thousand) commencing from the month of June, 2021. The order dated April 28, 2022 specifically records the pendency of the proceeding under the Domestic Violence Act and provides that the quantum of maintenance which the husband offered to pay to the de facto complainant and to the child at the rate of Rs.30,000/- (Rupees thirty thousand) per month commencing from the month of June 2021, was subject to the final decision of the Domestic Violence proceedings.

The Court is informed that in the Domestic Violence proceedings the quantum of maintenance is yet to be finalized.

The other ground of modification is the financial hardship of the husband.

The husband is a bank manager working with Punjab National Bank. The husband obviously draws a salary.

There is nothing on record to substantiate that the husband is in such a penury position so as not to pay a maintenance as offered by him. Significantly, the maintenance recorded in the order dated April 28, 2022 was the quantum which the husband offered to pay on such date. No material is placed before the Court that subsequent to the order dated April 28, 2022, the financial position of the husband deteriorated in such a fashion so as to prevent the husband from complying with the order dated April 28, 2022.

None of the two grounds canvassed by the husband for the modification of the order dated April 28, 2022 appeals to us.

Consequently, we are unable to allow the application being IA No. CRAN 1 of 2022 at the behest of the husband. Such application is dismissed.

As noted above, the application for cancellation of the anticipatory bail is founded primarily on the refusal of the husband to comply with the order dated April 28, 2022 in paying the maintenance as recorded therein. Admittedly, the husband is not paying any maintenance to the de facto complainant.

The offer of payment of maintenance as recorded by the order dated April 28, 2022, was one of the grounds which was taken into consideration for the purpose of granting anticipatory bail to the husband. Despite materials being available in the case diary implicating the husband at that point of time the Court prioritised between allowing the husband to be taken into custody for interrogation

and allowing anticipatory bail so as to allow the husband to retain his job and pay the maintenance to his wife and child. More so, when he offered to do so. He took the benefit of the indulgence of the Court only not to comply therewith.

We are conscious of the fact that payment of maintenance is not relatable to the issue of need for custodial interrogation or the absconson of the husband. However, at the same time we cannot be oblivious to the needs of the wife and child particularly when the Court is invited by the husband to record his willingness to pay maintenance to his wife and child.

The husband did not intend to pay the maintenance since inception and used it as a ploy to secure the anticipatory bail. Having secured the order he chose not to pay the maintenance In view of non-compliance of the payment of maintenance, and the conduct of the husband as noted above, we deem it appropriate to cancel the anticipatory bail granted in favour of the husband on April 28, 2022.

The jurisdictional Court will take appropriate steps consequent upon cancelling of the order granting anticipatory bail to the husband.

The Court was persuaded to pass the order dated April 28, 2022 at the behest of the husband. The husband chose not to comply with such order without any justifiable ground. The husband took the benefit of such order. He is required to disgorge such benefit.

In such circumstances, merely cancelling the order for anticipatory bail will not subserve the interest of justice The wife and her child remains un-maintained till date.

The husband of the de facto complainant and the father of the child is a bank manager and is in a position to maintain the wife and the child.

In such circumstances, Punjab National Bank where the husband is employed is restrained from disbursing any salary or retiral benefits to the husband till such time the entire quantum of maintenance as directed by the order dated April 28, 2022 is paid by the husband to the wife and the child, till date.

The de facto complainant is at liberty to communicate this order to the appropriate authority of Punjab National Bank who will deduct the amount standing to the credit of the husband in their accounts, including the retiral and other benefits, to cover the quantum of maintenance as recorded by the order dated April 28, 2022. Till such amount is paid to the de facto complainant and her child, no amount should be disbursed in favour of the husband.

CRM (DB) 2402 of 2022 is disposed of.

(Debangsu Basak, J.) (Md. Shabbar Rashidi, J.)