

Criminal Revision**PRESENT : The Hon'ble Justice Ashim Kumar Roy****Judgment On: 15-02-2010.****C.R.R. No. 4660 of 2009*****Fajley Hake Khan******versus******The State of West Bengal & Anr.*****Point:**

Bail: Whether it is permissible for a Court even after finding a case for bail has been made out, to allow the prayer for bail by imposing a condition which is not otherwise called for or to allow his prayer for bail on such condition when it is found no case for bail has been made out - Code of Criminal Procedure, 1973- Ss.437,439

Fact: The petitioner in this criminal revisional application challenged the order whereby he was directed to pay the provisionally assessed electric charges as the condition of bail.

Held: It is well settled a Court while granting bail to an accused in exercise of power under Section 439 of the Code may impose any condition those delineated in sub-section (3) of Section 437 of the Code of Criminal Procedure. The whole object behind imposition of condition is to ensure that the accused must be available for his trial and must not commit an offence similar to the offence of which he is accused or of the commission of which he is suspected. Section 439 of the Code has no right to record a finding as to guilt or innocence of an accused or to determine his liability. The Learned Court below has no jurisdiction to call upon the petitioner to pay the provisionally assessed electric charges as a condition of bail and thereby curtailed his lawful right to challenge such assessment. The question of liability of an accused to pay the electricity charges which he allegedly consumed unauthorizably is a matter to be determined by the appropriate authority in terms of the provisions of the Electricity Act and it is not for the Criminal Court to compel the accused to pay the provisionally assessed amount at the cost of his liberty of bail. It is always open to a Court to either grant bail or to refuse bail upon taking into consideration the evidentiary materials collected by the police during investigation but it is not at all permissible for a Court even after finding a case for bail has been made out, to allow the prayer for bail by imposing a condition which is not otherwise called for or to allow his prayer for bail on such condition when it is found no case for bail has been made out. (Paragraph – 4)

For Petitioner : Mr. Prasun Kumar Dutta

For State : Mr. Debobrata Roy

For O.P. No. 2 : Mr. Aniket Mitra

The Court: 1. The present petitioner apprehending arrest in connection with a case

registered at Keshpur Police Station relating to an offence punishable under Section 135 (i)(a) of the Indian Electricity Act, 2003 applied for anticipatory bail before this Hon'ble High Court. When this Hon'ble Court allowed his such prayer on the following conditions;

(i) The petitioner shall make himself available for interrogation by the Investigating Agency as and when required.

(ii) No direct or indirect threat or any inducement would be made 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.

And further directed the petitioner must submit to the jurisdiction of the regular Court within a period of four weeks and upon his surrender before the Learned Court below, the Learned Magistrate shall consider the prayer for bail of the petitioner on the basis of the materials available against him as on that date without being guided by the disposal of the said application.

2. Thereafter, the petitioner surrendered before the regular Court, i.e., before the Learned Judge, Special Court under Electricity Act and the Additional Sessions Judge, Paschim Medinipur and prayed for bail. When the petitioner was taken into custody and was released on interim bail which was to be remain valid till November 20, 2009 subject to the condition by that day the petitioner shall pay the provisionally assessed electric charges payable by him for unauthorized use of electricity.

The petitioner in this criminal revisional application challenged the order whereby he was directed to pay the provisionally assessed electric charges as the condition of bail.

3. Heard the Learned Counsels appearing on behalf of the parties.

Perused the impugned order and other materials on record.

4. It is well settled a Court while granting bail to an accused in exercise of power under Section 439 of the Code may impose any condition those delineated in sub-section (3) of Section 437 of the Code of Criminal Procedure. The whole object behind imposition of condition is to ensure that the accused must be available for his trial and must not commit an offence similar to the offence of which he is accused or of the commission of which he is suspected. To exclude the possibilities of tampering with the evidence and to prevent the misuse of the liberty of bail by the accused the Court may also put other

condition requiring the accused to attend the police station and not to leave or to enter any particular area, but Court while exercising its jurisdiction under Section 439 of the Code has no right to record a finding as to guilt or innocence of an accused or to determine his liability. In the instant case, the Learned Judge while releasing the petitioner on interim bail impose a condition for payment of provisionally assessed amount as regards to the electricity charges. According to the provisions of Electricity Act the provisionally assessed amount is subject to the final order of assessment to be made by the assessing officer after giving reasonable opportunity of hearing to the person concerned. The order of final assessment is also an appealable order. In such circumstances, the Learned Court below has no jurisdiction to call upon the petitioner to pay the provisionally assessed electric charges as a condition of bail and thereby curtailed his lawful right to challenge such assessment. The question of liability of an accused to pay the electricity charges which he allegedly consumed unauthorizedly is a matter to be determined by the appropriate authority in

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terms of the provisions of the Electricity Act and it is not for the Criminal Court to compel the accused to pay the provisionally assessed amount at the cost of his liberty of bail. It is always open to a Court to either grant bail or to refuse bail upon taking into consideration the evidentiary materials collected by the police during investigation but it is not at all permissible for a Court even after finding a case for bail has been made out, to allow the prayer for bail by imposing a condition which is not otherwise called for or to allow his prayer for bail on such condition when it is found no case for bail has been made out. In the case at hand, this Hon'ble High Court has allowed the petitioner's prayer for anticipatory bail after taking into consideration the materials available against him from the Case Diary. Therefore, it would have been just and proper for the Learned Regular Court not to decline the accused's prayer for bail on the self-same materials on the basis of which his prayer for anticipatory bail was allowed.

5. For the reasons stated above, the condition of payment of provisionally assessed electric charges subject to which the petitioner was granted interim bail is set aside. The Learned Court below is directed to dispose of the petitioner's application for bail finally in accordance with law and keeping in mind that he has been granted anticipatory bail by this Hon'ble High Court. The Court shall make necessary order upon consideration of the Case Diary. The petitioner is directed to appear before the Learned Court below within three weeks from this date and till his application for bail is finally disposed of the petitioner shall continue on interim bail.

This application thus stands allowed.

Criminal Section is directed to deliver urgent Photostat certified copy of this Judgement to the parties, if applied for, as early as possible.

(*Ashim Kumar Roy, J.*)

