

ITEM NO.1

Court 10 (Video Conferencing)

SECTION II-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl.) No(s). 1274/2021

(Arising out of impugned final judgment and order dated 27-07-2020 in BA No. 4646/2020 passed by the High Court Of Jharkhand At Ranchi)

MANOJ KUMAR SOOD & ANR.

Petitioner(s)

VERSUS

STATE OF JHARKHAND

Respondent(s)

([TO BE TAKEN UP AS FIRST ITEM]

IA No. 19988/2021 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES AND IA 35262/2021- FOR PERMISSION TO FILE ADDL.DOCUMENTS)

Date : 19-03-2021 This matter was called on for hearing today.

CORAM : HON'BLE MS. JUSTICE INDIRA BANERJEE
HON'BLE MR. JUSTICE KRISHNA MURARI

For Petitioner(s) Mr. T. V. George, AOR

For Respondent(s) Mr. Rana Mukherjee, Sr.Adv.
Mr. Joby P. Varghese, AOR
Mr. Nishant Srivastava, Adv.
Mr. Aby P.Varghese, Adv.
Mr. Rajneesh Jha, Adv.
Mr. Vikram Jakhar, Adv.

Mr. Vishnu Sharma, Standing Counsel
Ms. Mukti Chaudhry, AOR

UPON hearing the counsel the Court made the following
O R D E R

This Special Leave Petition is against the order dated 27.07.2020 in B.A.No.4646 of 2020 passed by the High Court of Jharkhand at Ranchi insofar as the petitioner has been granted bail, subject inter-alia to the condition of deposit of bank guarantee of Rs.53,60,000/- in the Trial Court.

...2/-

The impugned condition is extracted hereinbelow for convenience:

"...(iv) Petitioners shall deposit Rs.53,60,000/- by way of bank draft before the learned trial court in the name of the informant and the trial court shall release the same after obtaining an affidavit from the informant. Parties are at liberty to amicably settle their dispute. If the amount of Rs.53,60,000/- is paid within a period of 60 days from the date of provisional bail, the same shall be made absolute on the conditions as stated above.

XXX XXX XXX

(viii) If the petitioners fail to deposit the said amount within 60 days of their provisional bail, the trial court shall cancel their bail bonds and take them into custody forthwith."

As pointed out by Mr. Rana Mukherjee, learned Senior Advocate appearing for the complainant, the impugned order records that the petitioners are now ready and willing to deposit the amount before the Trial Court. The question is whether bail could have been granted subject to deposit of Rs.53,60,000/-. In our view the High Court erred in making bail conditional upon furnishing of a bank guarantee which is as good as cash deposit having regard to the condition usually imposed by banks for issuance of bank guarantee.

Ex facie, the disputes in the instant case are civil in nature. The complainant has also filed a civil suit for specific performance of an alleged agreement executed by the petitioners for sale of property in Himachal Pradesh, which is pending adjudication.

By imposing the condition of furnishing bank guarantee of Rs.53,60,000/-, the High Court has, in an application for bail under Section 439 of the Criminal Procedure Code, virtually issued directions in the nature of attachment before judgment in a civil suit, if not recovery of dues without trial.

It is well settled by a plethora of decisions of this Court that criminal proceedings are not for realization of disputed dues. It is open to a Court to grant or refuse the prayer for bail, depending on the facts and circumstance of the particular case. The factors to be taken into consideration, while considering an application for bail are, the nature of accusation and the severity of the punishment in the case of conviction; the nature of the materials relied upon by the prosecution; reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant or the witnesses; reasonable possibility of securing the presence of the accused at the time of trial or the likelihood of his abscondence; character behaviour and standing of the accused; the larger interest of the public or the State and similar other considerations. A Criminal Court, exercising jurisdiction to grant bail/anticipatory bail, is not expected to act as a recovery agent to realise the dues of the complainant, and that too, without any trial.

In *Shyam Singh vs. State through CBI* reported in (2006) 9 SCC 169 on which reliance has been placed on behalf of the petitioner, this Court categorically held that it is open to a Court to grant or refuse bail but to say that offence has been committed even at

the stage of granting bail and to direct repayment of any amount is both onerous and unwarranted.

As held by this Court in *Anil Mahajan vs. Bhor Industries Ltd.* reported in (2005) 100 SCC 228, the substance of the complaint is to be seen. If criminal proceedings are unwarranted, there can be no question of custody and in no circumstance can bail be made subject to the terms, which tantamount, in effect, to execution at the inception.

In the circumstances, we deem it appropriate to modify the order of the High Court impugned by deleting conditions (iv) and (viii) extracted hereinabove, that is, the condition of furnishing bank guarantee of Rs.53,60,000/-. Needless to mention that the other conditions shall remain the same.

It is made clear that the observations in this order are *prima facie* observations and will not influence any proceedings in future.

The Special Leave Petition is disposed of, accordingly.

Pending application(s), if any, shall stand disposed of.

(NIRMALA NEGI)
COURT MASTER (SH)

(MATHEW ABRAHAM)
COURT MASTER (NSH)