

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. M.P. No. 342 of 2020

Jitendra Oraon

...

Petitioner

-versus-

The State of Jharkhand

...

Opposite Party

CORAM : HON'BLE MR. JUSTICE ANANDA SEN

THROUGH : VIDEO CONFERENCING

For the Petitioner : Mr. Rahul Pandey, Advocate
For the State : Mr. Suraj Verma, A.P.P.

5/ 20.04.2020 The lawyers have no objection with regard to the proceeding which has been held through video conferencing today at 12.00 noon. They have no complain with respect to the audio and video clarity and quality.

2. Heard Mr. Rahul Pandey, learned counsel for the petitioner and Mr. Suraj Verma, learned A.P.P. for the State.

3. In this application, the petitioner has prayed to set aside the part of the order dated 14.01.2020, passed by the Judicial Commissioner, Ranchi in B.P. No. 02 of 2020 (arising out of Complaint Case No.6136 of 2019) wherein the learned Judicial Commissioner, Ranchi has imposed a fine of Rs.60,000/- (Rupees Sixty Thousand) to be deposited in favour of the Excise Department as a condition for grant of bail.

4. Petitioner is an accused of committing an offence punishable under Section 47(a) of the Excise Act. The allegation against the petitioner is that he had stored 106.2 litres of country-made and foreign liquor in his shop. On receipt of the aforesaid information, the shop of the petitioner was raided and the materials were seized and thereafter the criminal case was instituted against the petitioner and he was taken in custody. The petitioner moved for regular bail before the Judicial Commissioner, Ranchi, which was allowed and the bail was granted, but with a condition that the petitioner should deposit a sum of Rs.60,000/- (Rupees Sixty Thousand) as fine in favour of the Excise Department through e-challan by entering into the website of the Government of Jharkhand. Aggrieved by the condition imposed upon the petitioner, to deposit the fine, petitioner has

approached this Court by invoking jurisdiction under Section 482 of the Code of Criminal Procedure, praying therein to set aside the aforesaid condition, which has been imposed.

5. Counsel for the petitioner submits that the condition, which has been imposed, is absolutely erroneous and dehors the provisions of law. He submits that fine cannot be imposed as a condition of bail. He submits that though conditions can be imposed while granting bail, but, such conditions cannot be dehors the provisions of law. He submits that the conditions should be in consonance with the provisions laid down in Sections 437, 438 and 439 of the Code of Criminal Procedure (hereinafter referred to as 'Code'). He submits that the aforesaid order amounts to holding the petitioner guilty without a trial and thus, the condition imposed is unsustainable in the eyes of law.

6. Learned A.P.P. appearing for the State submits that the Court is well within its jurisdiction to impose any condition in lieu of grant of bail. He submits that from perusal of aforesaid Sections of the Code, it is crystal clear that the legislation has given power to the Court to impose any condition for grant of bail. The Court has exercised its jurisdiction and has imposed condition, thus, it cannot be said that the discretionary power has been used in an arbitrary manner and nor can it be said that the discretionary powers are dehors the law. Learned A.P.P. further submits that from the impugned order, it would be quite clear that the petitioner was ready to deposit any amount of fine, whatever may be imposed by the Court, thus, the Court below has directed the petitioner to pay the fine. He submits that the petitioner cannot now backtrack from his voluntary submission before the Court below. He submits that since the petitioner submitted to pay the fine, is now estopped from filing this application and this application is not maintainable.

7. The main contention in this application is whether the condition, which has been imposed upon the petitioner in lieu of grant of bail is sustainable in the eyes of law or not.

8. Provisions as to bail and bail bonds are enshrined in Chapter XXXIII of the Code. Section 437 provides for grant of bail when a person accused or a suspect has approached before a Court other than the High Court or the Court of Sessions. In this case, bail was granted by the Judicial Commissioner, Ranchi, which is a Court of Sessions. Thus, the

relevant provision would be Section 439 of the Code. It is necessary to quote Section 439 of the Code, which reads as under: -

439. Special powers of High Court or Court of Session regarding bail – (1) A High Court or Court of Session may direct-

(a) that any person accused of an offence and in custody be released on bail, and if the offence is of the nature specified in sub-section (3) of section 437, may impose any condition which it considers necessary for the purposes mentioned in that sub-section;

(b) that any condition imposed by a Magistrate when releasing any person on bail be set aside or modified;

Provided that the High Court or the Court of Session shall, before granting bail to a person who is accused of an offence which is triable exclusively by the Court of Session or which, though not so triable, is punishable with imprisonment for life, give notice of the application for bail to the Public Prosecutor unless it is, for reasons to be recorded in writing, of opinion that it is not practicable to give such notice;

Provided further that the High Court or the Court of Session shall, before granting bail to a person who is accused of an offence triable under sub-section (3) of section 376 or section 376-AB or section 376-DA or section 376-DB of the Indian Penal Code (45 of 1860), give notice of the application for bail to the Public Prosecutor within a period of fifteen days from the date of receipt of the notice of such application.

(1-A) The presence of the informant or any person authorized by him shall be obligatory at the time of hearing of the application for bail to the person under sub-section (3) of section 376 or section 376-AB or section 376-DA or section 376-DB of the Indian Penal Code (45 of 1860).

(2) A High Court or Court of Session may direct that any person who has been released on bail under this Chapter be arrested and commit him to custody.

9. From perusal of sub section (1)(a) above, it is clear that the Court can impose any condition, which it considers necessary for the purpose mentioned in sub section (3) of Section 437 of the Code. Similar is the provision enshrined in Section 438(2)(iv) of the Code. Thus, from the aforesaid provisions of law, it is clear that the Court has power to impose any condition, which it considers necessary for the purpose of grant of bail. Now the question is whether the term '**any condition**' can be given a

literal meaning to include any conditions which the Court feels and even include irrelevant conditions also or should it be confined to conditions, which are relevant and have some nexus with the purpose for which a bail is granted.

10. The Hon'ble Supreme Court in the case of ***Munish Bhasin & Others versus State (Government of NCT of Delhi) & Another*** reported in **(2009) 4 SCC 45** at paragraph 10 thereof has held as under: -

10. It is well settled that while exercising discretion to release an accused under Section 438 of the Code neither the High Court nor the Sessions 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.

11. In the aforesaid judgment, at paragraph 11 thereof, the Hon'ble Supreme Court has held that 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. Paragraph 11 of the judgment further dictates that to subject an accused to any other condition would be beyond jurisdiction of the power conferred on court under Section 438 of the Code.

12. It is also necessary to note that the Hon'ble Supreme Court in the aforesaid judgment has held that the conditions should not be harsh, onerous or excessive, so as to frustrate the object of grant of bail. It is necessary to quote paragraph 12 of the said judgment, which reads as under: -

12. 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. There is no manner of doubt that 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.

13. Be it noted here that the words ‘**other condition**’ or ‘**any condition**’ finds place in Section 437 (3) and Section 439(1)(a) of the Code. Section 438(2)(iv) also refers to ‘**other condition**’ which may be imposed. These conditions, by virtue of Section, relates to Section 437(3) of the Code, which is apparent from the reading of Section 439(1)(a) and Section 438(2)(iv) of the Code. Thus, ‘**any condition**’ and ‘**other condition**’ as referred to in all these three Sections should be similar in nature.

14. Further, the Hon’ble Supreme Court in the case of **Sanjay Chandra versus Central Bureau of Investigation** reported in **(2012) 1 SCC 40** at paragraph 21 thereof has held as under: -

21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.

15. Thus, from the aforesaid findings, it is clear that the object of bail is neither punitive nor preventative, rather deprivation of the liberty must be considered a punishment.

16. Further, the Hon’ble Supreme Court in the case of **Sumit Mehta versus State (NCT of Delhi)** reported in **(2013) 15 SCC 570** at paragraph 15 thereof has observed as under: -

15. The words “any condition” used in the provision should not be regarded as conferring absolute power on a court of law to impose any condition that it chooses to impose. Any condition has to be interpreted as a reasonable condition acceptable in the facts permissible in the circumstance and effective in the pragmatic sense and should not defeat the order of grant of bail. We are of the view that the present facts and circumstances of the case do not warrant such extreme condition to be imposed.

17. In the instant case, I find that the condition, which has been imposed by the Judicial Commissioner is to pay a fine amounting to

Rs.60,000/- (Rupees Sixty Thousand).

18. Section 53 of the Indian Penal Code provides for punishment. The modes of punishment in the Indian Penal Code is laid down in the aforesaid Section, which reads as under: -

Section 53. "Punishments"-The punishments to which offenders are liable under the provisions of this Code are, -

First. – Death;

Secondly. – Imprisonment for life;

Thirdly. – [repealed];

Fourthly. – Imprisonment, which is of two descriptions, namely;

(1) Rigorous, that is, with hard labour;

(2) Simple;

Fifthly. – Forfeiture of property;

Sixthly. - Fine

19. The sixth clause is a mode of punishment, which is by imposing fine. Thus, as per the Indian Penal Code, fine is a punishment. Section 63 provides that what would be the amount of fine and how the same is to be imposed. Section 64 of the Indian Penal Code provides for sentence of imprisonment for non-payment of fine. Further, the subsequent sections, i.e., from Section 65 to Section 69 of the Indian Penal Code deals with the punishment, when the punishment is imposed by way of fine.

20. The case in hand relates to the Excise Act. Bihar Excise Act, 1950 has been adopted by the State of Jharkhand. Chapter VIII of the Bihar Excise Act deals with fines and penalties. Petitioner herein is an accused of an offence punishable under Section 47(a) of the Excise Act. For better appreciation, it is necessary to quote the aforesaid provision, which reads as under :-

47. Penalty for unlawful import, export, transport, manufacture, possession, consumption, sale etc. – *If any person, in contravention of this Act or of any rule, notification, or order made, issued or given or licence, permit or pass granted under this Act –*

(a) imports, exports, transports, manufactures, possesses, consumes or sells any intoxicant; or

(b)

(c)

(d)

(e)

(f)

(g)

(h)

he shall be punished with imprisonment for a term

which may extend to three years and shall be liable to fine which may extend to five thousand rupees and a term which may extend to one year :

Provided that this punishment shall be –

(1) for the first offence he shall be liable for imprisonment for a term which shall not be less than three months and a fine of not less than five hundred rupees and in default of payment of fine, a further imprisonment for a term of fifteen days.

(2) for the second and subsequent offences he shall be liable for imprisonment for a term which shall not be less than six months and a fine of not less than one thousand rupees, and in default of payment of fine a further imprisonment for a term of one month.

21. From the aforesaid provision of law, it is also crystal clear that imposition of fine, so far as it relates to the Excise Act, is also by way of a punishment.

22. Thus, from the aforesaid provisions of law mentioned above, it is quite clear that fine can be imposed only by way of punishment. A fine is imposed only when the guilt of the accused is proved and he is convicted of the charge framed against him. In a given situation if an accused pleads his guilt according to the provisions of law laid down, he can be punished and fine can be imposed. Thus, unless the guilt is proved and accused is convicted, no punishment can be imposed and fine which is in fact a sentence cannot be awarded.

23. It is well settled that while dealing with the bail application, the finding, which is given therein while disposing the bail application is not conclusive finding so far as it relates to the guilt of the accused. While considering the bail, the Court is not trying the accused and it does not give a concrete decision on the guilt or innocence of the accused. Findings are prima facie in nature, which should not have any bearing in the trial of the accused. The accused is convicted or acquitted on the basis of the evidence, which is led in course of trial. The order passed in the bail is not a final judgment in the trial.

24. In the instant case, the Court below has imposed a fine of Rs.60,000/- (Rupees Sixty Thousand) as a condition of bail. Since imposition of fine, from the aforesaid provisions of law, can only be imposed after conclusion of trial and that too after convicting an accused, by way of sentence, the aforesaid condition of imposition of fine passed by

the Court below is bad in law. The said condition is against the provisions laid down in Sections 437 and 439 of the Code and is an irrelevant condition, which is not in consonance with the judgment passed by the Hon'ble Supreme Court as referred to above. This condition has got no nexus with the object and purpose for which a bail is granted.

25. Thus, from the aforesaid judgments and findings hereinabove, I am of the view that the Court cannot impose '**any condition**' he likes while granting bail. '**Any condition**' or '**other condition**' has to be in consonance with the object and purpose of grant of bail and as per the judgment of the Hon'ble Supreme Court in the case of **Sumit Mehta (supra)** and other cases cited above. The court is not conferred with absolute power to impose '**any condition**' which he feels and chooses to impose, rather the same has to be reasonable and pragmatic.

26. So far as the contention of the learned A.P.P. to the effect that the petitioner, himself, had volunteered to pay the fine, thus giving power to the Court to impose the same, is concerned, this Court is not accepting the said contention. A petitioner or the accused can make any submission before the Court, but, it is the Court, which has to decide whether those submissions are within the parameters defined by the law. The Court should not be swayed by the submissions made by the parties, rather, should evaluate and base its order on the correct perspective and principle of law. In this case, even if the petitioner had submitted that he is ready to pay the fine, the Court should not have considered the same as the said submission do not amount to pleading of his guilt. There is a procedure to plead guilt. Making a submission of this sort while moving a bail application, cannot be said to be admitting guilt or pleading his guilt. Be it noted that the Court was in seisin of a bail application and nothing more. The Court should have brushed aside this type of submission which does not have any force of law or fact while arriving at a conclusion deciding a bail application. The order of the Court should be based on tenets of law and not on some mere submission, which is absolutely de hors the provisions of law. In view of the aforesaid, this Court feels that the principle of estoppel cannot be made applicable and this application is maintainable.

27. In view of what has been held above, I am constrained to hold that the condition, which has been imposed upon the petitioner to the effect that he should pay a fine of Rs.60,000/- (Rupees Sixty Thousand) by e-challan as a condition of bail, is not in accordance with law and is liable

to be set aside. Thus, the part of the order dated 14.01.2020, passed by the Judicial Commissioner, Ranchi in B.P. No. 02 of 2020 (arising out of Complaint Case No.6136 of 2019) wherein the learned Judicial Commissioner, Ranchi has imposed a fine of Rs.60,000/- (Rupees Sixty Thousand) to be deposited in favour of the Excise Department as a condition for grant of bail, is hereby set aside. The Court below will not insist the petitioner to deposit fine as a condition of bail.

28. This criminal miscellaneous petition is, accordingly, allowed to the aforesaid extent.

(Ananda Sen, J.)