

ITEM NO.1

COURT NO.4

SECTION II-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Crl.) No(s). 2411/2016

(Arising out of impugned final judgment and order dated 04-12-2015
in ABA No. 4049/2015 passed by the High Court of Jharkhand at
Ranchi)

BUKMANI MAHATO

Petitioner(s)

VERSUS

THE STATE OF JHARKHAND

Respondent(s)

(FOR APPOINT A GUARDIAN OF A MINOR ON IA 5323/2016
FOR [PERMISSION TO FILE ANNEXURES] ON IA 8357/2017)

Date : 03-08-2017 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE RANJAN GOGOI
HON'BLE MR. JUSTICE NAVIN SINHA

For Petitioner(s) Mr. Praveen Kumar, Adv.
Mr. Lakshay Dhamija, Adv.
Mr. Sahil Gupta, Adv.
Mr. Gautam Talukdar, AOR

For Respondent(s) Mr. Atulesh Kumar, AOR

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

1. In the present special leave petition (Crl) No.2411 of 2016 an order dated 04.12.2015 of the High Court of Jharkhand refusing to grant pre-arrest bail to the accused-petitioner was challenged. On 04.04.2016 the following order was passed by this Court :

"Issue notice.

In the event the petitioner is arrested, she may be released on bail by making deposit of Rs.25,000/- in cash to the satisfaction of the trial Court and shall co-operate with the investigation at all further stages."

2. Clearly and evidently the order dated 04.04.2016 is an interim order of granting pre-arrest bail to the accused-petitioner.

3. It appears that on legal advice, the petitioner surrendered before the learned Trial Court on 21.04.2016 and thereafter released on regular bail.

4. When the said fact was brought to the notice of the Court, the order dated 18.04.2017 was passed to the following effect :

"It is stated by the learned counsel for the accused-petitioner that the petitioner has surrendered before the learned Trial Court and the said Court has granted her regular bail.

By order dated 04.04.2016 this Court has granted interim pre-arrest bail to the accused-petitioner with the direction that the accused-petitioner shall cooperate with the investigation.

It appears that on 21.04.2016 the accused-petitioner surrendered before the learned Trial Court and in view of the order dated 04.04.2016 passed by this Court the learned Trial Court has granted regular bail to the accused-petitioner. This is evident from the certified copy of the Order dated 21.04.2016 of the learned Trial

Court, placed before us.

We do not see as to how or why the petitioner could have surrendered before the learned Trial Court and sought regular bail when the proceedings in Special Leave Petition (Crl.) No.2411 of 2016 were pending before this Court.

We also do not understand how in view of the pendency of the said proceedings before this Court the learned Trial Court could have granted regular bail to the accused-petitioner.

In the aforesaid circumstance, we deem it proper to recall our order dated 04.04.2016 granting pre-arrest bail to the accused-petitioner and also to cancel the bail granted to the accused-petitioner by the learned Trial Court by its order dated 21.04.2016. The accused-petitioner shall forthwith surrender before the learned Trial Court. We also direct the Registrar General of the Jharkhand High Court to obtain explanation of the Presiding Officer of the learned Trial Court which has passed the order dated 21.04.2006 in case No. GR-2786/2014 as to how the said Court could have granted bail when this Court was in seisin of the matter in Special Leave Petition (Crl.) No.2411 of 2016.

The aforesaid explanation be placed before the Court on or before 5th May, 2017.

List the matter on 5th May, 2017."

5. On a mention being made on 09.05.2017 the Court had directed that the matter to be listed after the summer vacation and in the meantime, if the petitioner is not in custody, it was directed

that she will not be arrested.

6. This is how the matter has come before us.

7. Pursuant to our order dated 18.04.2017, the explanation of the judicial officer concerned has been forwarded to the Registry of this Court by the Registrar General of the High Court of Jharkhand.

8. We have perused the said explanation. We have also read and considered the order dated 21.04.2017 passed by the said judicial officer granting regular bail to the accused-petitioner. On due consideration of the explanation submitted on the order dated 21.04.2016, we are of the view that regular bail was granted to the accused-petitioner on a misconstruction of this Court's order, which misconstruction was a bonafide mistake on the part of the judicial officer. The matter insofar as the judicial officer is concerned is, therefore, closed.

9. Coming to the case of the accused-petitioner and her role and conduct in the matter, we have perused the affidavit filed in this regard by the petitioner. The stand taken therein

is that the petitioner surrendered before the trial Court and sought and was granted regular bail on legal advice. In paragraph 8 of the affidavit, a statement has been made that enquiries with the local counsel have revealed that it has become a regular practice for accused to surrender before the learned trial Court and seek regular bail immediately after interim pre-arrest is granted by the higher forums.

10. When this Court or a High Court or even a Sessions Judge grants interim anticipatory bail and the matter is pending before that Court, there can be no occasion for the accused to appear and surrender before the learned trial court and seek regular bail. The predicament of the subordinate Judge in considering the prayer for regular bail and the impossibility of denial of such bail in the face of the pre-arrest bail granted by a higher forum is real. Surrender and a bail application in such circumstances is nothing but an abuse of the process of law by the concerned accused. Once a regular bail is granted by a subordinate Court on the strength of the interim/pre-arrest bail granted by the superior Court, even if the superior Court

is to dismiss the plea of anticipatory bail upon fuller consideration of the matter, the regular bail granted by the subordinate Court would continue to hold the field, rendering the ultimate rejection of the pre-arrest bail by the superior Court meaningless.

11. If this is a practice that is prevailing in some of the subordinate Courts in the Country and we have had notice of several such cases, time has come to put the learned subordinate Courts in the country to notice that such a practice must be discontinued and consideration of regular bail applications upon surrender during the pendency of the application for pre-arrest bail before a superior Court must be discouraged. We, therefore, direct that a copy of this order be forwarded to the Director of all Judicial Academies in the country to be brought to the notice of all judicial officers exercising criminal jurisdiction in their respective States.

12. Insofar as the present case is concerned, we reiterate our order dated 18.04.2017 and recall our interim order(s) dated 04.04.2016 and 09.05.2017 as well as the order of regular bail

granted by the learned trial Court dated 21.04.2016 and direct that the accused shall now surrender before the learned trial Court within fifteen days from today failing which the investigating agency will apprehend the accused and take her into custody.

13. We also make it clear that once the accused is in custody, it will be open for her to move an application for regular bail which as and when moved will be considered on its own merits by the Court of competent jurisdiction.

14. Special leave petition and all pending application(s) are disposed of in the above terms.

(NEETU KHAJURIA)
COURT MASTER

(ASHA SONI)
BRANCH OFFICER