

Sankar Modhi Vs. State of Assam

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SooperKanoon Citation : sooperkanoon.com/125322

Court : Guwahati

Decided On : Mar-29-1997

Judge : D.N. Chowdhury, J.

Acts : Code of Criminal Procedure (CrPC) , 1974 - Sections 438; Indian Penal Code (IPC) - Sections 376 and 417

Appeal No. : Bail Appln. No. 633 of 1997

Appellant : Sankar Modhi

Respondent : State of Assam

Advocate for Def. : N. Mohammad, Public Prosecutor

Advocate for Pet/Ap. : B.D. Das, H.K. Sarma and R. Ali, Advs.

Prior history : D.N. Chowdhury, J. 1. This is an application Under section 438 of the CrPC praying for a direction for releasing the petitioner on bail, in the event of his arrest by the police in connection with the All Women P.S. Case No. 15/97 Under sections 376/417 of the IPC 2. Mr. B.D. Das, learned Counsel for the petitioner submitted that the allegation containing in the FIR if it is taken on its face value did not disclose any offence Under section 376 of the IPC. According to Mr. Das at best the offence

Judgement :

D.N. Chowdhury, J.

1. This is an application Under section 438 of the Cr PC praying for a direction for releasing the petitioner on bail, in the event of his arrest by the police in connection with the All Women P.S. Case No. 15/97 Under sections 376/417 of the IPC

2. Mr. B.D. Das, learned Counsel for the petitioner submitted that the allegation containing in the FIR if it is taken on its face value did not disclose any offence Under section 376 of the IPC. According to Mr. Das at best the offences alleged can be an offence Under section 417 of the IPC which is a non-cognizable offence and bailable. Mr. Das in support of his contentions brought my attention to the decision of this Court in Maran Chandra Paul v. State of Tripura reported in 1997 Cri LJ 715. Mr. Das, the learned counsel for the petitioner further submitted that the accused is working for gain in the office of the Executive, Regional Office Pollution Control Board and in the event of his detention in the police custody in connection with Criminal offence would entail serious consequences in his service career. Mr. Das, learned Counsel also brought my attention to the order of this Court dated 2-5-97 wherein this Court granted interim bail that during the pendency of the bail application petitioner shall not be arrested.

3. Mr. N. Mahammad, learned PP produced the case diary before this Court.

4. I have heard learned counsel for the parties and also considering the facts situation, I am not inclined to exercise power Under section 438 of the Cr PC for the reason that the matter of granting bail can be considered by the Court of 1st instance.

The power Under section 438, Cr PC is to be exercised in extreme cases and allow the regular Court to exercise its jurisdiction in accordance with law. The power Under section 438, Cr PC is not meant to overreach or circumvent the power of the normal channel and to by pass the regular Court.

5. Considering those aspects of the matter, I, therefore, refuse to exercise my extraordinary power Under section 438 of the Cr PC without going to the merits of

the contentions raised by Mr. Das. Accordingly, I direct the petitioner to surrender before the Court of the learned Judicial Magistrate Kamrup within 15 (fifteen) days from the receipt of the certified copy of this order and on surrendering the said petitioner may also move an appropriate application before the said Chief Judicial Magistrate, Kamrup for his bail and on receiving the said application the Chief Judicial Magistrate, Kamrup shall take up the bail application and pass necessary order in accordance with law.

6. While considering the bail application the learned Court below shall no doubt take into consideration the fact that the refusal of bail amounts to deprivation of personal liberty which is of immense value to a citizen. Such deprivation of liberty is no doubt permissible only in the public good.

7. Bail cannot be refused as a punitive measure.

8. The learned Court below while considering the bail application of the petitioner shall also take into consideration that the petitioner is working in a public office. The learned CJM shall accordingly pass necessary orders in accordance with law, keeping in mind the guiding principles of law in this regard without being influenced by the fact that the application Under section 438, Cr PC was rejected by this Court.

9. The interim order dated 2-5-97 passed by this Court shall automatically stand vacated on the expiry of the period specified above or on surrendering of the petitioner before the learned Civil Judicial Magistrate whichever is earlier.

10. Subject to the observation made above the bail application is rejected.