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MUKESH KISHANPURIA

v.

STATE OF WEST BENGAL

(Special Leave Petition (Crl.) No. 3224 of 2010)

MAY 3, 2010

B

[MARKANDEY KATJU AND A.K. PATNAIK, JJ.]

Code of Criminal Procedure, 1973:

C

s.438 – Anticipatory bail – Rejected by High Court – HELD: A perusal of order of High Court and also of the record, indicates that there is no reason to grant anticipatory bail to the petitioner – However, he may apply for regular bail and also file an application for interim bail, which application shall be decided on the same day on which it is filed.

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Bail – Interim bail – HELD: The power to grant regular bail includes the power to grant interim bail pending final disposal of the application for regular bail – This power is inherent in the power to grant bail, particularly, in view of Article 21 of the Constitution which contemplates that a person should not be compelled to go to jail if he can establish prima facie that in the facts of the case he is innocent – Constitution of India, 1950 – Article 21.

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CRIMINAL APPELLATE JURISDICTION : SLP (Criminal)
No. 3224 of 2010.

From the Judgment & Order dated 26.3.2010 of the High Court at Calcutta in C.R.M. No. 3810 of 2010.

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Prashant Kumar (for Ap & J Chambers) for the Petitioner.
U.U. Lalit (NP), Rishi Maheshwari, Sumit Attri, Shally Bhasin Maheshwari, Suman Jyoti Khaitan for the Respondent.

The following order of the Court was delivered

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O R D E R

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1. Heard learned counsel for the petitioner.

2. This petition has been filed against the impugned judgment and order dated 26.03.2010 of the High Court of Calcutta whereby the petition under Section 438 Cr.P.C. for grant of anticipatory bail to the petitioner herein has been rejected.

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3. We have gone through the impugned judgment and order and also perused the record. We also see no reason to grant anticipatory bail to the petitioner.

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4. However, the petitioner may apply for regular bail before the Court concerned and alongwith the said application, he may file an application for interim bail pending disposal of the regular bail application. We have made it clear on a number of occasions that the power to grant regular bail includes the power to grant interim bail pending final disposal of the regular bail application. This power is inherent in the power to grant bail, particularly in view of Article 21 of the Constitution of India. We are of the opinion that in view of Article 21 of the Constitution, a person should not be compelled to go to jail if he can establish prima facie that in the facts of the case he is innocent.

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5. Hence, if the present petitioner applies for regular bail before the Court concerned, he may also file an application for interim bail alongwith the same, which application shall be decided on the same day on which it is filed, pending final disposal of the regular bail application.

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6. We also make it clear that the Trial Court shall decide the bail application uninfluenced by any observation made by the High Court in the impugned order.

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7. The special leave petition stands disposed of in the above terms.

R.P.

Special Leave Petition disposed of.

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