

574 SUPREME COURT CASES (2017) 15 SCC

(2017) 15 Supreme Court Cases 574
(Record of Proceedings)

(BEFORE RANJAN GOGOI AND NAVIN SINHA, JJ.)

RUKMANI MAHATO .. Petitioner;

Versus

STATE OF JHARKHAND .. Respondent.

SLP (Crl.) No. 2411 of 2016[†], decided on August 3, 2017

Criminal Procedure Code, 1973 — Ss. 438, 437 and 439 — Practice of accused surrendering before trial court and seeking regular bail, after grant of interim anticipatory bail by superior court, while matter still pending before superior — Such practice directed to be discontinued — Consideration of such regular bail applications upon surrender, during pendency of application for pre-arrest bail before superior court, directed to be discouraged — Necessary directions issued

— Order of High Court refusing to grant pre-arrest bail to petitioner-accused was challenged before Supreme Court — Supreme Court passed an interim order, granting pre-arrest bail to petitioner — Thereafter, on legal advice, petitioner surrendered before trial court and was released on regular bail — Said fact was brought to notice of Supreme Court

— Held, on due consideration of explanation of Judicial Officer granting regular bail, it is clear that regular bail was granted to petitioner on a misconstruction of Supreme Court's order, which was a bona fide mistake on part of Judicial Officer — Hence, matter insofar as Judicial Officer is concerned is, therefore, closed

— Regarding petitioner and her role and conduct in the matter, according to affidavit filed by her in this regard, petitioner surrendered before trial court and sought and was granted regular bail on legal advice — In the affidavit, a statement has been made that enquiries with local counsel have revealed that it has become a regular practice for accused to surrender before trial court and seek regular bail immediately after interim pre-arrest is granted by higher forums

— Further, held, when Supreme Court or High Court or even a Sessions Judge grants interim anticipatory bail and matter is pending before that Court, there can be no occasion for accused to appear and surrender before trial court and seek regular bail — The predicament of Subordinate Judge in considering the prayer for regular bail and impossibility of denial of such bail in the face of pre-arrest bail granted by a higher forum is real — Surrender and bail application in such circumstances is nothing but an abuse of process of law

[†] Arising from impugned Final Judgment and Order in *Rukkmani Mahto v. State of Jharkhand*, 2015 SCC OnLine Jhar 5478 (Jharkhand High Court, Ranchi Bench, ABA No. 4049 of 2015, dt. 4-12-2015)

a by accused concerned — Once regular bail is granted by subordinate court on strength of interim/pre-arrest bail granted by superior court, even if superior court is to dismiss plea of anticipatory bail upon fuller consideration of matter, regular bail granted by subordinate court would continue to hold the field, rendering ultimate rejection of pre-arrest bail by superior court, meaningless

b — Such practice must be discontinued and consideration of regular bail applications upon surrender during pendency of application for pre-arrest bail before a superior court must be discouraged — Therefore, directions issued to forward a copy of instant order to Director of all judicial academies in India, to be brought to the notice of all Judicial Officers exercising criminal jurisdiction in their respective States

c — In instant case, interim orders of Supreme Court as well as order of regular bail granted by trial court, are recalled — Accused directed to surrender before trial court within fifteen days from present, failing which investigating agency will apprehend the accused and take her into custody — Further clarified, that once accused is in custody, it will be open for her to move application for regular bail, which will be considered on its own merits by court of competent jurisdiction — Constitution of India — Art. 136 — Criminal Trial — Bail — Generally (Paras 6 to 12)

d *Rukkmani Mahto v. State of Jharkhand*, 2015 SCC OnLine Jhar 5478, *affirmed*
Rukmani Mahato v. State of Jharkhand, SLP (Cri) No. 2411 of 2016, order dated 18-4-2017 (SC), *confirmed*
Rukmani Mahato v. State of Jharkhand, SLP (Cri) No. 2411 of 2016, order dated 4-4-2016 (SC); *Rukmani Mahato v. State of Jharkhand*, SLP (Cri) No. 2411 of 2016, order dated 9-5-2017 (SC), *recalled*

e Y-D/59004/SR

Advocates who appeared in this case :

Praveen Kumar, Lakshay Dhamija, Sahil Gupta and Gautam Talukdar (Advocate-on-Record), Advocates, for the Petitioner;
Atulesh Kumar (Advocate-on-Record), Advocate, for the Respondent.

f **Chronological list of cases cited** **on page(s)**

1. SLP (Cri) No. 2411 of 2016, order dated 9-5-2017 (SC), *Rukmani Mahato v. State of Jharkhand* 577a-b, 578b-c
2. SLP (Cri) No. 2411 of 2016, order dated 18-4-2017 (SC), *Rukmani Mahato v. State of Jharkhand* 576c, 577b, 578b-c
3. SLP (Cri) No. 2411 of 2016, order dated 4-4-2016 (SC), *Rukmani Mahato v. State of Jharkhand* 576a, 576b, 576c-d, 576d-e, 576f-g, 578b-c
- g 4. 2015 SCC OnLine Jhar 5478, *Rukkmani Mahto v. State of Jharkhand* 576a

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ORDER

1. In the present Special Leave Petition (Crl.) No. 2411 of 2016, an order dated 4-12-2015¹ of the High Court of Jharkhand refusing to grant pre-arrest bail to the petitioner-accused was challenged. On 4-4-2016² 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 cooperate with the investigation at all further stages.”

2. Clearly and evidently the order dated 4-4-2016² is an interim order of granting pre-arrest bail to the petitioner-accused. It appears that on legal advice, the petitioner surrendered before the learned trial court on 21-4-2016 and thereafter released on regular bail.

3. When the said fact was brought to the notice of the Court, the order dated 18-4-2017³ was passed to the following effect:

“1. It is stated by the learned counsel for the petitioner-accused that the petitioner has surrendered before the learned trial court and the said court has granted her regular bail. By order dated 4-4-2016² this Court has granted interim pre-arrest bail to the petitioner-accused with the direction that the petitioner-accused shall cooperate with the investigation.

2. It appears that on 21-4-2016 the petitioner-accused surrendered before the learned trial court and in view of the order dated 4-4-2016² passed by this Court the learned trial court has granted regular bail to the petitioner-accused. This is evident from the certified copy of the order dated 21-4-2016 of the learned trial court, placed before us.

3. 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 petitioner-accused.

4. In the aforesaid circumstance, we deem it proper to recall our order dated 4-4-2016² granting pre-arrest bail to the petitioner-accused and also to cancel the bail granted to the petitioner-accused by the learned trial court by its order dated 21-4-2016. The petitioner-accused 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 21-4-2006 in Case No. GR-2786/2014 as to how the said court could have granted bail

1 *Rukkmani Mahto v. State of Jharkhand*, 2015 SCC OnLine Jhar 5478

2 *Rukkmani Mahato v. State of Jharkhand*, SLP (Cri) No. 2411 of 2016, order dated 4-4-2016 (SC)

3 *Rukkmani Mahato v. State of Jharkhand*, SLP (Cri) No. 2411 of 2016, order dated 18-4-2017 (SC)

when this Court was in seisin of the matter in Special Leave Petition (Crl.) No. 2411 of 2016.

a 5. The aforesaid explanation be placed before the Court on or before 5-5-2017. List the matter on 5-5-2017.”

4. On a mention being made on 9-5-2017⁴ the Court had directed 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.

b 5. This is how the matter has come before us.

6. Pursuant to our order dated 18-4-2017³, 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.

c 7. We have perused the said explanation. We have also read and considered the order dated 21-4-2017 passed by the said Judicial Officer granting regular bail to the petitioner-accused. On due consideration of the explanation submitted on the order dated 21-4-2016, we are of the view that regular bail was granted to the petitioner-accused on a misconstruction of this Court’s order, which misconstruction was a bona fide mistake on the part of the Judicial Officer. The matter insofar as the Judicial Officer is concerned is, therefore,
d closed.

e 8. Coming to the case of the petitioner-accused 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 Para 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.

f 9. 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 accused concerned. Once a regular bail is granted by a subordinate
g 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.

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4 *Rukmani Mahato v. State of Jharkhand*, SLP (Cri) No. 2411 of 2016, order dated 9-5-2017 (SC)
3 *Rukmani Mahato v. State of Jharkhand*, SLP (Cri) No. 2411 of 2016, order dated 18-4-2017 (SC)

10. 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.

11. Insofar as the present case is concerned, we reiterate our order dated 18-4-2017³ and recall our interim order(s) dated 4-4-2016² and 9-5-2017⁴ as well as the order of regular bail granted by the learned trial court dated 21-4-2016 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.

12. 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.

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

Court Masters

3 *Rukmani Mahato v. State of Jharkhand*, SLP (Cri) No. 2411 of 2016, order dated 18-4-2017 (SC)
2 *Rukmani Mahato v. State of Jharkhand*, SLP (Cri) No. 2411 of 2016, order dated 4-4-2016 (SC)
4 *Rukmani Mahato v. State of Jharkhand*, SLP (Cri) No. 2411 of 2016, order dated 9-5-2017 (SC)