

ITEM NO.19                      Court 6 (Video Conferencing)                      SECTION II-C

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 (CrI.) Nos. 5793-5794/2021

(Arising out of impugned final judgment and order dated 13-07-2021 in MCRCA No. 294/2021 19-01-2021 in MCRCA No. 1757/2020 passed by the High Court Of Chhatisgarh At Bilaspur)

AJAY KAUSHIK

Petitioner(s)

VERSUS

THE STATE OF CHHATTISGARH

Respondent(s)

(FOR ADMISSION and I.R. and IA No.95100/2021-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.95099/2021-EXEMPTION FROM FILING O.T. and IA No.95101/2021-INTERVENTION/IMPLEADMENT)

Date : 23-08-2021 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL  
HON'BLE MR. JUSTICE HRISHIKESH ROY

For Petitioner(s)    Mr. Gagan Gupta, AOR

For Respondent(s)

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

Application for impleadment is allowed.

Learned counsel for the petitioner has drawn our attention to the various proceedings and the material placed on record. It appears that originally as per the statement under Section 161 Cr.P.C., the offences made out were under Section 498-A read with Section 34, IPC. Predicated on those offences charged, the mother and sister were granted

anticipatory bail but the petitioner withdrew the application with liberty to apply for regular bail. However, what transpired later on was that while recording statement before the Court under Section 164 Cr.P.C., allegations which were treated as one under Section 377, IPC were made for the first time and consequently that provision was added. This necessitated the mother and the sister of the petitioner to get anticipatory bail once again on account of addition of provisions of Section 377, IPC.

The petitioner again sought anticipatory bail arising out of the allegation under Section 377 IPC which has been dismissed by the impugned order on the ground that the petitioner has withdrawn the earlier bail application and with liberty to file regular bail.

It is the contention of the petitioner that the reasoning contained in the impugned order predicated on the earlier withdrawal is not correct as the consequences of the allegations under Section 498A and Section 377 IPC are quite different. Learned counsel also relied on the material placed on record to contend that till the petitioner went to her parents house on 28.01.2020 and soon thereafter also everything appeared to be hunky dory as there are photographs and whatsapp messages to

that effect. The endeavour of the panchayat to reconcile whatever differences arose was not successful. That is the reason the petitioner sent a legal notice dated 28.05.2020 seeking restoration of conjugal rights.

On our query learned counsel for the petitioner submits that mobile is still with the petitioner.

In our view the mobile was required to be deposited immediately in view of the nature of allegations made which have resulted in the inclusion of provisions of section 377, IPC.

On a conspectus of the matter we are of the view that the petitioner should apply to the trial Court for regular bail after surrendering and we grant the petitioner one week's time to surrender. However, mobile phone should be positively deposited with the investigating officer by tomorrow i.e. 24.08.2021.

It will be open to the petitioner to urge all the aspects before the trial Court seeking regular bail and rely on the material placed before us.

The special leave petition is disposed of in the aforesaid terms.

Pending applications stand disposed of.

[CHARANJEET KAUR]  
ASTT. REGISTRAR-cum-PS

[POONAM VAID]  
COURT MASTER (NSH)