

Bail Application No. 08 of 2017
Lalan Kumar Roy @ Lalon Kumar Roy v. Chiranjilal Pareek

BEFORE
BHASKAR RAJ PRADHAN, J.

28.11.17 Present: Mr. Rahul Rathi, Advocate for the petitioner.

Mr. Sajal Sharma, Advocate for the Respondent.

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ORDER (O R A L)

An application for bail under Section 439 of Code of Criminal Procedure, 1973 (CrPC) has been filed by the Petitioner.

2. The Petitioner, Lalan Kumar Roy @ Lalon Kumar Roy was accused in Private Complaint Case No. 01 of 2016 under Section 138 of the Negotiable Instruments Act, 1881 (N.I Act). The Petitioner faced trial and vide Judgment dated 10.02.2017 was acquitted of the charge. Aggrieved by the order, the Private Complainant, the Respondent herein filed Criminal Leave Application No. 04/2017. The Application for Leave was examined by this Court and vide order dated 20.06.2017 leave was granted and the Appeal admitted for hearing.

3. On 22.06.2017, notice was issued in Criminal Appeal No.14/2017. On the failure of the Petitioner to appear before this Court in spite of summons having been received, this Court issuedailable warrant of arrest vide Order dated 10.10.2017, which was not executed. However, on 09.11.2017 the Petitioner appeared before this Court along with his Counsel Mr. Rahul Rathi and on the submission made by the learned Counsel to issue process under Section 390 of CrPC to secure his presence,

this Court directed issuance of warrant of arrest against the Petitioner to be arrested and brought before the Court of Learned Chief Judicial Magistrate, South Sikkim (CJM).

4. This Court further directed that the Court of the CJM may commit him to prison pending the disposal of the Appeal or admit him to bail as deemed fit. It was also directed that the learned CJM may examine the parameter of law under Section 390 CrPC and pass necessary orders. The Petitioner was also given liberty, to secure his release in accordance with law.

5. Pursuant thereto on 13.11.2017, the Petitioner filed an application praying for bail under Section 436 read with 390 CrPC. On 14.11.2017, the order of the learned CJM reveals, the Petitioner surrendered before the Court of the learned CJM. The learned CJM after having examined the matter in detail rejected the bail application of the Petitioner and accordingly, remanded the Petitioner to judicial custody till 29.11.2017.

6. The Petitioner has therefore moved an application for Bail before this Court to secure his liberty.

7. It is trite that the when an accused is acquitted of a criminal charge, the presumption of innocence is doubly assured.

8. Section 390 CrPC is a discretionary power to be exercised by the High Court, under circumstances, which compels the Court to issue the process to ensure that the accused would submit to the jurisdiction of the High Court in which the Appeal is pending. Although, the

power under Section 390 CrPC is discretionary, the warrant which must be issued is non-bailable as the Section requires the accused be brought before the Court on execution of the warrant. The discretion however, rests with the Court before which the accused is brought, to commit him to prison or admit him to bail.

9. The failure of the Petitioner to appear before this Court after the Appeal was admitted and in spite of his appearance at the time of grant of leave and receipt of summons compelled this Court to issue the process under Section 390 CrPC.

10. The offence under Section 138 N.I Act is a bailable offence and the Petitioner has surrendered before the learned Trial Court. In all fairness the Petitioner is entitled to bail, however, on the following conditions:-

(i) *he shall provide personal bond of Rs. 20,000/- and 2 reliable sureties of the like amount before the learned CJM.*

(ii) *he shall provide his residential address with his active personal mobile number and during the course of the hearing of the appeal, if the address and the mobile number changes he shall intimate the change to the Court of the learned CJM, the Registry of this Court as well as to the learned Counsel for the Petitioner forthwith.*

(iii) *he shall appear personally on each date of hearing during the proceedings in Criminal Appeal No. 14/2017.*

(iv) *he shall also provide the residential as well as the active personal mobile numbers of the two sureties and*

during the course of the hearing of the Appeal , if the addresses and the mobile number of the Sureties changes, he shall intimate the change to the Court of the learned CJM, the registry of this Court as well as to the learned Counsel for the Petitioner.

11. Accordingly, Bail Application No. 08/2017 is allowed and disposed of.

Judge
28-11-2017

/avi **Index : Yes / No**
Internet : Yes / No