

2023 LiveLaw (SC) 945

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
ANIRUDDHA BOSE; J., BELA M. TRIVEDI; J.**

October 16, 2023.

**CRIMINAL APPEAL NO(S). OF 2023 (Arising from SLP(Crl.)No(s).11130/2023)
RAMADHAR SAHU versus THE STATE OF MADHYA PRADESH**

Code of Criminal Procedure, 1973; Section 362 - Court not to alter judgment – Refusal of Bail - Section 362 which prohibits modification of a judgment or final order, will not be applicable in an order for refusal of bail. An order for refusal of bail however, inherently carries certain characteristics of an interlocutory order in that certain variation or alteration in the context in which a bail plea is dismissed confers on the detained accused right to file a fresh application for bail on certain changed circumstances. Thus, an order rejecting prayer for bail does not disempower the Court from considering such plea afresh if there is any alteration of the circumstances. Conditions of bail could also be varied if a case is made out for such variation based on that factor. Prohibition contemplated in Section 362 of the Code would not apply in such cases. (Para 5)

(Arising out of impugned final judgment and order dated 17-08-2023 in MCRC No. 35492/2023 passed by the High Court of M.P. Principal Seat at Jabalpur)

For Petitioner(s) Mr. Uday Gupta, Adv. Ms. Shivani Lal, Adv. Mr. Hiren Dasan, Adv. Ms. Indu Pande, Adv. Mr. M. K. Tripathi, Adv. Ms. Sanam Singh, Adv. Mr. Rajeev Kumar Gupta, Adv. Ms. Sundari, Adv. Mr. Parminder Singh Bhullar, AOR

For Respondent(s) Mr. Sunny Choudhary, AOR Mr. Abhimanyu Singh Ga, Adv. Mr. Sushil Tomar, Adv.

ORDER

Leave granted.

2. Heard learned counsel appearing for the appellant and the respondent-State.
3. The appellant at present is in pre-trial custody on allegation of lifting cash through the ATM cards which were meant to have been issued to the account holders of the bank. Allegations have been made for commission of offences, *inter-alia*, under Sections 420, 467, 468, 471, 408, 201 and 120B of the IPC and Sections 66 & 66-C of Information Technology Act. Certain other accused persons have also been implicated in the same crime. An order was passed by the High Court on 28.04.2022 allowing the appellant's prayer for bail. As recorded in that order, the appellant had volunteered to deposit a sum of Rs.65,92,460/-. The said order carried the condition that the appellant had to deposit Rs.10,00,000/- before the Trial Court and Rs.55,92,460/- was to be deposited under protest within a period of three months from the date of his release. There were other conditions which were imposed but those are not relevant for considering the appellant's plea in this proceeding. The offences, commission of which are alleged against him, relate to embezzlement of a sum of Rs.1,44,00,000/-. The appellant was released on bail on deposit of Rs.10,00,000/-. The appellant had failed to deposit the remaining amount and surrendered on 24.07.2023. He applied for bail again mainly citing release of a co-accused by this Court on 01.05.2023 in SLP (Crl.) No. 3158 of 2023. The said co-accused was earlier released on bail by the High Court on his willingness to deposit certain sum of money but later on failed to make such deposit. The appellant's fresh application for bail was refused by the High Court. The appellant sought parity with the co-accused in the application which was rejected. In the order rejecting his application for bail, the High Court

referred to Section 362 of the Code of Criminal Procedure, 1973. The said provision reads:-

“Section 362. Court not to alter judgment-.

Save as otherwise provided by this Code or by any other law for the time being in force, no Court, when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error.”

4. The opinion of the High Court, in the impugned order, is that in the event the High Court granted bail to the appellant without compliance of the conditions specified in the earlier order of a Coordinate Bench, that would constitute modification of the order and Section 362 of the Code prohibits such modification of a judgment or final order.

5. An order for refusal of bail however, inherently carries certain characteristics of an interlocutory order in that certain variation or alteration in the context in which a bail plea is dismissed confers on the detained accused right to file a fresh application for bail on certain changed circumstances. Thus, an order rejecting prayer for bail does not disempower the Court from considering such plea afresh if there is any alteration of the circumstances. Conditions of bail could also be varied if a case is made out for such variation based on that factor. Prohibition contemplated in Section 362 of the Code would not apply in such cases. Hence, we do not think the reasoning on which the impugned order was passed rejecting the appellant’s application of bail can be sustained. The impugned order is set aside and the matter is remitted to the High Court. The bail petition of the appellant before the High Court shall revive to be examined afresh by the High Court in the light of our observations made in this order.

6. The appeal stands allowed in the above terms.

7. Pending application(s), if any, shall stand disposed of.

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