



2024:DHC:8668



* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 2nd September, 2024
Pronounced on: 29th October, 2024

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+ CRL.M.A. 10347 & CRL.M.A. 10348/2023 in BAIL APPLN. 621/2013

SUNIL PANDEY

S/o Shri V.N. Pandey,
R/o House No. 603, Tower-P,
Sector-28, Faridabad-121001

..... Petitioner

Through: Mr. Anirudh Gupta, Advocate.

versus

1. **STATE**

..... Respondent No. 1

2. **SWATI LEKHA**

D/o Dr. K.N. Tiwari,
R/o 55-Deepali, Pitampura,
New Delhi

..... Respondent No. 2

Through: Mr. Hemant Mehla, APP for State.
Mr. Prashant Mendiratta, Mr. Ambitabh
Chaturvedi, Mr. Ankit Monga, Ms.
Somyashree, Mr. Sanchit Saini & Mr.
Samar Pratap Singh, Advocates for R-2.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

JUDGMENT

NEENA BANSAL KRISHNA, J.

CRL.M.A. 10347/2023 & CRL.M.A. 10348/2023

1. An Application under Section 437(5) read with Section 439 and Section 482 of Code of Criminal Procedure, 1973 (*hereinafter referred to as "Cr.P.C., 1973"*) dated 15.04.2023, has been filed on behalf of the *Applicant/ Swati Lekha* seeking recall of Order dated 12.08.2014 *vide* which the Respondent-Sunil Pandey was admitted to Anticipatory bail on the basis of Settlement Agreement dated 22.11.2013 which was



recorded *vide* Order dated 08.01.2014 in CRL.M.A. 423/2014 jointly filed by the Petitioner and the Applicant-Respondent No. 2.

2. ***The Applicant*** Swati Lekha had an arranged marriage with the Respondent Sunil Pandey on 16.04.2006. Unfortunately, the marriage was turbulent from the very beginning and lasted for about four years. From their wedlock, one daughter was born on 10.02.2008 who is in the custody of Applicant/mother. The parties last resided together in a rented accommodation till 17.04.2010. Applicant/Wife claims that she was driven out of the Matrimonial Home on 01.05.2010 while the Respondent who was not happy with the marriage, shifted to Ahmedabad. She along with her daughter, started living at her parental home where she stayed till 10.01.2024.

3. The Wife was constrained to file the following petitions:

- a. HMA 233/2012 for Divorce on 25.05.2012 before Family Court, Rohini;*
- b. Maintenance Petition No. 148/2012 u/s 125 Cr.P.C., 1973, on 05.11.2012 before Family Court, Rohini;*
- c. Complaint to CAW Cell on 10.09.2012 which resulted into the FIR No. 0046 dated 21.01.2013 u/s. 406/498A IPC, PS Mangol Puri, Outer District, Delhi; and*
- d. Petition Complaint Case No. 24/4/2013 under Protection of Women against Domestic Violence Act, on 28.01.2013 before Ld. MM:MC:NW: Rohini.*

4. The Respondent/husband then filed his first Anticipatory Bail Application on 28.01.2013 before the FIR was registered. Subsequently, he withdrew this Anticipatory Bail Application on 29.01.2013 when the FIR No. 46/2013 under Sections 406/498A/34 of the *IPC, 1860* was registered.

5. The Respondent filed *second Anticipatory Bail Application under Section 438 of Cr.P.C., 1973* on 03.02.2013. Learned Additional Sessions Judge granted anticipatory Bail on 04.02.2013, by directed that in the event of Petitioner's arrest, prior Notice of five working days' be given to him. Accordingly, a five working days' Notice was served by the Investigating Officer, on 14.03.2013.



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6. Consequently, the *third Anticipatory Bail Application under Section 438 of Cr.P.C., 1973* was filed, on 18.03.2013. During the hearing, pursuant to the directions of the Court, all the dowry articles were returned to the Applicant-wife. The Bail Application was rejected by the learned Additional Sessions Judge *vide* Order dated 10.04.2013.

7. The Respondent approached this Court by filing *the fourth Anticipatory Bail Application No. 621/2013*. During the hearing, the Respondent's father volunteered to pay a tentative amount of Rs. 5,00,000/- to the wife as recorded in the *Order dated 16.04.2013*. The interim protection against arrest, was granted to the Petitioner.

8. The parties were referred to Mediation wherein an *Interim Settlement Agreement* dated 22.11.2013 was arrived at wherein the terms *inter alia* were that the parties would stay together for maximum *six months and in case of failure*, the husband agreed to transfer 50% share in his Ahmedabad flat to the Applicant/wife and to deposit Rs. 90,000/- per month in a joint bank account of the parties bearing No. 12031050004728. **The settlement was taken on record vide Order dated 10.01.2014 and parties made their statements in the court accepting the Terms thereof.**

9. Pursuant to the terms of the *Interim Settlement Agreement*, the parties lived together from 10.01.2014 to 11.05.2016 i.e. for about two and a half years. The Anticipatory Bail Application of the Respondent was allowed after the six months in terms of the *Interim Settlement Agreement dated 22.11.2013, vide* Order dated 12.08.2014. During this period of living together, the parties had their second child on 10.02.2015.

10. The Applicant-wife submits that after separation, the Respondent did not make payment of the Rs. 90,000/- per month in terms of the Settlement on the ground that the six months period was over after which his obligation to comply with the terms of the Settlement Agreement, ceased to exist. The Respondent failed to even paying the educational expenses of the children and did not transfer the 50% share in the property at Ahmedabad, as was agreed.



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11. The present Application **CRL.M.A. 10348/2023** was thus, filed by the Applicant-wife seeking recall of Order dated 12.08.2014 *vide* which the Petitioner was admitted to Anticipatory bail on the basis of *Settlement Agreements* between the parties.

12. It is submitted that projection of compromise as a ground for bail, has to be seen from a different perspective and this Court is not powerless in such a situation where the Respondent has failed to abide by the terms of the Settlement, and ought to secure the ends of justice by recalling the Order dated 12.08.2014 *vide* which the Respondent husband was granted Bail. Reliance for the same is placed on Manish Bajaj v. State 2007 SCC OnLine Del 888 and Yash Kumari & Anr. V. State (NCT of Delhi) 2016 SCC OnLine Del 5832.

13. **No formal reply has been filed by the Respondent to this Application for Cancellation of Bail.** It is however, denied that he has committed breach of the Settlement or that his bail is liable to be cancelled.

14. It is further asserted that since beginning of the marriage, the Petitioner and his family members had always given love and affection and all the comforts to the Applicant/wife, though she never cooperated and always picked up quarrels with them. She was indifferent, rude and hostile.

15. On 17.04.2010, the husband and the Applicant/Wife went to her parent's house in Pitampura, Delhi on the false pretext of her mother being unwell. She took her belongings, clothes, the entire jewellery, etc. The Husband on the request of the Applicant – wife, stayed at her parental home overnight and realising that the mother was not suffering from fever, he asked her to return home. She however decided to stay for few more days in her parental home and on her insistence; he also stayed at her parent's house for three nights.

16. Despite repeated requests, the Applicant kept postponing her return and eventually declined to return on 22.04.2010. Her father made wild allegations against him, his father and sister and made him leave the house. Despite Respondent's efforts, he was not permitted to enter the parental house on the next day. The Petitioner sent various SMSs to the Applicant on her phone, but she did not respond; rather indicated that he should either shift to her parental home or give her a divorce.



17. From 17.04.2010, she has been residing at her parental home. Thereafter, the Applicant along with her parents, took away her entire articles and household items, from the house in October, 2010 making it evident that she had no intention to continue to live with the Petitioner.

18. It is claimed that a false case was registered against him and his family members in September, 2012 in Crime Against Women Cell, Rohini ("C.A.W. Cell" *hereinafter*). The Petitioner joined the investigations and made all efforts for reconciliation but to no avail.

19. The Applicant/wife then filed the ***Divorce Petition No. 233/2012*** under *Section 13(1)(ia)* of the *Hindu Marriage Act, 1955* in the Family Court, Rohini, Delhi, on false allegations. In the interim, the efforts for reconciliation were continued in the C.A.W. Cell. The Respondent got a new job at BTW India Pvt. Ltd. which he took with an intent to have his family life, but again the Applicant-wife refused outrightly.

20. The Applicant further filed an Application **CRL.M.A. 10347/2023 under Section 431 read with Section 421 of Cr.P.C.** to recover Rs. 61,32,823/- as a fine. The amount is calculated at the rate of Rs. 90,000/- per month for the household expenses and educational expenses for herself and the children from 11.05.2016 till 31.03.2023. She has also claimed an amount equivalent to ½ share in the Property at Ahmedabad viz. Flat bearing No. D-501, 5th Floor, Savvy Solaris, Gujarat which was also to be transferred by the Husband in terms of *Settlement dated 10.01.2014*. Reliance has been placed on the judgement of the Division Bench in *Dayawati v. Yogesh Kumar Gosain* 2017 SCC OnLine Del 11032.

21. Contemporaneously, the **CONT.CAS(C) 464/2017** under Sections 11 and 12 of the *Contempt of Courts Act, 1971* read with Article 215 of the Constitution of India, 1950, has been filed on 03.07.2017 filed on behalf of Petitioner-Swati Lekha Tiwari claiming that the Respondent-Sunil Pandey has committed the contempt of Court in contravention of *Order dated 10.01.2014* passed in CRL. M.A. No. 423/2014 filed in Bail Application No. 621/2013 , **which is decided separately.**

22. **Submissions heard and also perused the Note/Short Written Submissions filed on behalf of both the parties.**



23. The **cancellation of bail** is sought on the ground that despite giving Statement and undertaking for providing the maintenance support and otherwise join the company of the Petitioner, the Respondent-Sunil Pandey on the false pretext of Settlement, had procured the Anticipatory bail when he in fact, he never intended to settle the disputes.

24. Admittedly, the parties got married on 06.04.2006 and lived together till May, 2010 when the differences between the parties got aggravated to a point that the Applicant went to her parental home on 17.04.2010 and refused to return. In the intervening period, a complaint was made in C.A.W. Cell, Rohini by the Petitioner, wherein the efforts were made to reconcile the differences and the disputes. The parties even went for Mediation to work out an amicable conciliation. Eventually, the parties arrived at an Interim Settlement dated 22.11.2013 in CAW Cell Mediation Centre, the terms of which read as under: .

“The following settlement has been arrived at between the parties hereto:

a) That both the parties have agreed to bury the hatchet and resolve the matrimonial disputes between them and give a fresh start to their lives without any prejudice to their respective rights and remedies available as per the law of the land.

b) The parties and the minor daughter Anindya aged about 5 ½ year shall live together at the First Party's company rented accommodation at 2nd Floor, 320, Deepali Pitampura, Delhi.

c) That it has been mutually agreed upon by both the parties that the First Party would transfer 50% of the undivided share of his Flat bearing No. D-501, 5th Floor, Savvy Solaris, b/h D. Mart, Opp. AUDA Garden, Next to Balaji Residency, b/h D. Mart, Motera, Ahmedabad, presently registered in his favour vide a sale deed dated 19.05.2012 registered on 26.05.2012 with Sub-Registrar, SRO Ahmedabad-6, Naroda in the name of the Second Party by 31st December, 2013.

d) That the First Party and the Second Party hold a joint savings account No.12031050004728 maintained with HDFC Bank, Pushpanjali Enclave, Delhi, in which the First Party has been depositing an amount of Rs. 90,000/- (Rupees Nineteen Thousand Only) per month which the First Party will continue to do so and this said amount shall be exclusively used towards monthly household expenses besides all educational and other expenses for their daughter. Besides that, the parties hold a joint account in Axis Bank, also in which as per the convenience of the parties, amounts may be deposited.

e) That in the interim period of settlement, both the parties undertake not to pursue any of the pending cases and jointly request for an adjournment for



keeping the matter in abeyance till the final settlement . The Pending matters filed by the Second Party being:-

- i) Complaint Case No. 24/413 of 2012 titles as Smt. Swati Lekha Tiwari v. Sunil Pandey & Ors. under Section 12 of Protection of Women from Domestic Violence Act, pending before the Court of Ld. CMM, Rohini Courts, Delhi.*
- ii) Maintenance Petition No. 143 of 2012 under Section 125 of Cr.P.C. titled as Smt. Swati Lekha Tiwari Vs. Sunil Pandey pending before the Ld. Addl. Principal Judge (F.C) Rohini.*
- iii) HMA Petition No. 233/2012 titled as Smt. Swati lekha Tiwari vs. Sunil Pandey under Section 13 of Hindu Marriage Act, 1955 pending before Ld. Addl. Principal Judge (F.C.) Rohini.*
- f) The Following case was filed by the First Party against the Second Party:-*
 - i) Bail Application No. 621 of 2013 titled as Shri Sunil Pandey Vs. The State, pending before the Hon'ble High Court of Delhi.*
- g) That neither of the parties shall insist on living together with their respective parents or family members for long duration. However, both the parties would be free to periodically visit their respective parents and family members and they would also be at a liberty to visit/stay at the home of the parties at least once on a weekend in a month.*
- h) That the parties undertake to come once a month and report to the Mediation Centre during the interim settlement period and make earnest endeavour to amicably and peacefully live with each other and the parties undertake that once they are confident that they have reconciled all their differences and wish to dispose of all me pending matters then they can request at any point of time to tile Mediator to make the final settlement whereby all the above stated proceedings and pending matters as detailed hereinabove are withdrawn/ quashed so that the parties may live together thereafter In peace and happiness.*
- i) That in the unfortunate eventuality of the parties not being able to live together and reconcile in that event too, then either of the parties undertake that they would approach the Mediation Centre at any point of time during the interim period lor appropriate settlement of their matrimonial dispute and if possible help facilitate the mutual Consent divorce proceedings. ”*

25. Thereafter, the parties started residing together. The Bail Application of the Respondent was allowed and he was given interim Anticipatory Bail on 10.01.2014 which was confirmed on 12.08.2014.

26. From the entire narration of facts, it is evident that the Respondent-Sunil Pandey in terms of the Interim Settlement, resided together with the Petitioner from 10.01.2014 till about 11.05.2016, which was more than the agreed period of six months, in an



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endeavour to resolve their disputes and to live together. Their second child was born during this time. However, differences between them again surfaced and they eventually separated after about Two years and four months approximately, on 11.05.2016. It is evident that genuine efforts were made by the husband to reside together. Evidently, the irreconcilable differences again arose *inter se* the parties and despite best endeavour, they could not continue to live together. In these circumstances, it cannot be said that the Respondent-Sunil Pandey never intended for settlement or that false assurances were given only to secure the Anticipatory Bail. As has been stated above, pursuant to the interim Settlement dated 22.11.2013, not only did they start living together but a joint savings account in HDFC Bank was also opened in which the Respondent-Sunil Pandey contributed Rs. 90,000/- per month, for a few months.

27. Looking at the chequered history of matrimonial litigation, where several efforts have been made by the parties for settlement and that when the differences could not be sorted out, the Applicant resorted to seek her right to maintenance by filing the Petition and has also filed a Divorce petition, it cannot be said that the Respondent manipulated in agreeing for living together *vide* Settlement dated 22.11.2013 only to secure the Anticipatory Bail. There is no conduct attributable to the respondent/husband to conclude the purported Settlement was entered merely to secure the Bail.

28. There exist no ground for recalling the ***Order dated 12.08.2014 by which the Anticipatory Bail was granted; the Application for recall as also other pending application, are hereby dismissed.***

(NEENA BANSAL KRISHNA)
JUDGE

OCTOBER 29, 2024
S.Sharma