

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.15691 of 2015

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1. Shakuntla Devi W/o - Shyam Babu Prasad Gupta
 2. Shyam Babu Prasad Gupta@ Shyam Babu Prasad@ Shyam Babu Gupta, S/o - Baidh Nath Gupta
 3. Madhu Kumari D/o -Shyam Babu Prasad Gupta
 4. Bechan Prasad Sah@ Bachan Prasad Sah@Ved Prakash S/o-Ram Babu Prasad Gupta
 5. Rahul Kumar Gupta S/o -Shyam Babu Prasad Gupta All are resident of Belsand, P.s - Belsand, District- Sitamarhi, Ward No. 3

.... Petitioner/s

Versus

1. The State of Bihar
2. Amrita Devi W/o -Sunil kumar Gupta Resident of Village- Belsand, P.O.+ P.S.- Belsand, District-Sitamarhi, At present Address- Motilal Prasad(Post Assistant , Chief Post Office, Motihari, Balu Nagar Jamla Road, Ward No. 13, Motihari P.s- chatoni, District-East Champara.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Radha Mohan Pathak, advocate.
For the Opposite Party/s : Mr. Sanjay Kumar Pandey(App)

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL ORDER

2 06-05-2015

Heard learned counsel for the parties.

2. This application has been filed for modification of the order dated 10.12.2014 granting anticipatory bail to the petitioners on condition of fulfillment of the direction given by this Court in the order dated 25.09.2014 in Cr. Misc. No. 24139 of 2014 wherein Sunil Kumar Gupta, the husband of the complainant Amrita Devi, was granted privilege of anticipatory bail on an

undertaking given that he was ready and willing to resume and continue matrimonial relationship with the complainant as also ready to pay a sum of Rs. 1000/- to the complainant.

3. Learned counsel for the petitioners, however, has submitted that when the petitioners had surrendered and filed an application for summoning of the complainant to verify as with regard to the compliance of the order dated 25.09.2014 in Cr. Misc. No. 24139 of 2014, the same was rejected by passing an order to the fact that "there is no any such condition of the Hon'ble Court to this court so that the application is not fit to be allowed and accordingly rejected".

4. Learned counsel for the petitioners has also submitted that a sum of Rs. 1000/- was being deposited by the husband of the complainant in the Treasury and in support of it, two challans showing payment of Rs.5000/- have been produced, one being in the date 11.12.2014 and other is the date of 09.02.2015.

5. In the considered opinion of this Court, the husband of the complainant was never directed to deposit such amount in the Treasury from where the complainant will find very difficult to draw such amount and the whole idea of payment of Rs. 1000/- per month to the complainant was to ensure its payment

for her maintenance will go in vain. That apart, from the order of this Court dated 25.09.2014 in Cr. Misc. No. 24139 of 2014, relevant portion whereof reads as follows:

"Submission is of false implication under some confusion. Petitioner is ready and willing to resume and continue matrimonial relationship with the complainant opposite party no. 2 and also ready to pay a sum of Rs. 1000/- (one thousand only) to complainant opposite party no.2. There is positive response on behalf of opposite party no. 2.

*Having regard to the facts and circumstances of the case, **in the event of petitioner filing duly verified petition supported with personal affidavit before the court below, clearly stating all such intention and payment as stated above,** in the event of his arrest/surrender within four weeks, let the above named petitioner be enlarge on bail on furnishing bail bond of Rs. 10,000/- (ten thousand only) with two sureties of the like amount each to the satisfaction of **Chief Judicial Magistrate, Motihari, in connection with Complaint Case No. 3167/2012,** subject to condition laid down under Section 438 (2) of the Code of Criminal Procedure with additional condition to remain physically present on each and every date at least for two years or till disposal of the case and in case of failure on two consecutive dates or **willful violation of undertaking or single default in payment,** without giving any reasonable explanation, the privilege granted shall be deemed to be cancelled.*

However, in the event of filing individual petition on behalf of the petitioner, on getting positive response from the complainant opposite party no. 2 or on filing joint petition of compromise the court below shall permit the couple to go and reside at their place of choice on the condition to report personally to the court below on the dates fixed for the purpose and only after being satisfied of their conduct for a reasonable period, the court below shall pass appropriate order in accordance with law.

6. It would appear that the husband of the complainant had undertaken not only to pay a sum of Rs. 1000/- to his wife/complainant but also resume and continue the matrimonial relationship. This aspect of the matter can be only examined by the court below where the complaint case is pending.

7. Faced with this situation, learned counsel for the petitioners has submitted that the amount of Rs. 1000/-, as directed by this Court in the order dated 25.09.2014, shall be deposited in the court where the complaint case is pending, so that it may allow the complainant to withdraw this amount immediately on such payment.

8. Let it be made clear that such payment shall not be made in an adhoc manner in which payment was being made by the husband of the complainant in the Treasury. Such payment, in fact, has to be made month to month basis on every 5th day of the next month. The court below, in fact, has to also ascertain from the complainant as to whether her matrimonial relationship with her husband Sunil Kumar Gupta has been restored as was undertaken in the order dated 25.09.2014.

9. In that view of the matter, while modifying the earlier order of this Court dated 10.12.2015, this application is disposed of with the following terms:



(i) The petitioners as well as husband of the complainant Sunil Kumar Gupta, who is the son of the petitioner nos. 1 and 2 and also related to the rest of the petitioners, shall appear before the court below, where the complaint case is pending, on 29.05.2015 and on that day the complainant Amrita Devi shall also remain present in the court. If the court, on query from Amrita Devi, finds that her matrimonial relationship with her husband Sunil Kumar Gupta has been restored and that the payment of arrears of the amount fixed under the order dated 25.09.2014, is also deposited, the court below shall grant bail to the petitioners, but if either of the two things are found to be missing, the petitioners shall be taken into custody.

10. At this stage, learned counsel for the petitioners points out that such condition should not be to the petitioners, who are only In-laws, inasmuch as the liability, pursuant to the earlier order of this Court dated 25.09.2014, was against the husband. Such plea has to be noted only for its being rejected because the order granting bail to the petitioners was based on the fulfillment of the terms and conditions incorporated in the order granting

anticipatory bail to the husband, namely son of the petitioner nos.
1 and 2 and, therefore, that order cannot be modified now.

11. This application is accordingly, disposed of.

(Mihir Kumar Jha, J)

Sujit/-

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