

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.237 of 2015

Arising Out of PS.Case No. -33 Year- 2014 Thana -MAHILA PS District- JEHANABAD

1. Satyendra Pandey Son of Janardan Pandey Resident of Mohalla - Lok Nagar near Employment Exchange, P.S. - Jehanabad, District - Jehanabad.

.... Petitioner/s

Versus

1. The State of Bihar.

2. Kumari Mina Devi Wife of Satyendra Pandey Resident of Mohalla - Lok Nagar near Employment Exchange, P.S. - Jehanabad, District - Jehanabad.

.... Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Satish Kumar Sinha

For the Opposite Party/s : Mr. Suresh Pd. Singh (APP)

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 13-08-2015

Heard learned counsel for the petitioner and learned counsel for the State.

2. Despite valid service of notice to Opposite Party No. 2, none appears on her behalf.

3. This application under Section 482 of the Code of Criminal Procedure (for short the 'Code') has been filed seeking quashing of the order dated 19.09.2014 passed by the learned Sessions Judge, Jehanabad in Anticipatory Bail Petition no. 413/14 whereby, the application of the petitioner filed under Section 438 of the Code was allowed with a condition that the petitioner shall pay Rs. 2,000/- per month to the informant.

4. In the instant case, the petitioner has assailed the condition imposed in the order dated 19.09.2014 passed by the learned Sessions Judge, Jehanabad in A.B.P. No. 413 of 2014.

5. Before I pass any order, I must notice that on the basis of written report submitted by Opposite Party No. 2, Jehanabad Mahila P.S. Case No. 33 of 2014 was registered under Sections 498-A and 506 of the Indian Penal Code, whereby, anticipatory bail was granted to the petitioner with a condition that the petitioner shall pay Rs. 2,000/- per month to the informant of the case and in case of failure to make payment the bail bond would be cancelled.

6. The short point which has been raised by he learned counsel for the petitioner is that the condition on which the prayer for anticipatory bail of the petitioner was granted is beyond the ambit and scope of Section 438 of the Code.

7. Thus, the only point for consideration in this case is whether the condition of depositing Rs. 2,000/- per month to the informant of the case as indicated hereinabove for grant of anticipatory bail is sustainable in law.

8. In **Munish Bhasin and others Vs. State (Govt of NCT of Delhi) and another [(2009) 4 SCC 45]**, the Supreme Court considered whether payment of maintenance to the wife and child could be a precondition for release of accused on bail. After



examining the law in detail, the Supreme Court held that in a proceeding under Section 438 of the Code, the Court is not justified in awarding maintenance to the wife and child. It further held that subjecting an accused to any condition other than the conditions enumerated under Section 438 of the code would be beyond jurisdiction of the Court and question of maintenance has to be decided in an appropriate proceeding where the parties would adduce evidence in their respective cases but not in a proceeding under Section 438 of the Code.

9. In **Sheikh Ayub Vs. State of M.P. [(2004) 13 SCC 457]**, the Supreme Court held in that case that a direction to pay a portion of the amount misappropriated by the accused to the complainant as the condition of bail was unwarranted.

10. In **Ramathal And others Vs. Inspector of Police and another [(2009)12 SCC 721]**, the Supreme Court was considering a case in which the High Court had passed an order granting anticipatory bail on the condition that the accused persons shall be enlarged on bail after depositing Rs. 32 Lac before the Judicial Magistrate and also on their executing a personal bond of Rs. 1 Lac with two sureties of each for the like sum to the satisfaction of the Magistrate. In that case after hearing the parties, the Supreme Court in Paragraph 13 held as under:



“13. It appears that in the aforesaid facts and circumstances, the High Court passed the impugned order with the intention of protecting the interest of the complainant in the matter. In our considered opinion, the approach of the High Court was incorrect as under the impugned order a very unreasonable and onerous condition has been laid down by the court as a condition precedent for grant of anticipatory bail.”

11. In **Amarjit Vs. State of NCT of Delhi [(2009) 13 SCC 769]**, the Supreme Court in Paragraph 7 held as under:

7. “Having regard to the facts and circumstances of the present case, we have no hesitation in coming to the conclusion that the imposition of condition to deposit the sum of Rs. 15 lakhs in the form of FDR in the trial court is an unreasonable condition and, therefore, we set aside the said condition as a condition precedent for granting anticipatory bail to the appellant-accused.”

12. The aforesaid decisions of the Supreme Court give an abundant clarity as to the ambit and scope of sub-Section (2) of Section 438 of the Code. The Supreme Court has always frowned on onerous conditions being imposed as a condition precedent for grant of anticipatory bail.

13. In my opinion, any condition which has no reference to the fairness and propriety of investigation and trial cannot be imposed while exercising power conferred under Section 438 of the Code.

14. Thus, in the case on hand, the condition imposed by the learned Sessions Judge, Jehanabad for grant of anticipatory bail to the petitioner cannot be upheld. It is not disclosed from the record that the learned Sessions Judge considered the entire facts of the case in proper manner. The learned Sessions Judge ought to have considered the entire facts of the case including the gravity of the offence alleged and in the light thereof should have considered the prayer for grant of anticipatory bail.

15. In view of the aforesaid discussions, I am of the opinion that the entire order passed by the learned Sessions Judge, Jehanabad is required to be set aside and the matter has to be reconsidered in accordance with law. I accordingly, set aside the impugned order dated 19.09.2014 passed by learned Sessions Judge, Jehanabad in ABP No. 413 of 2014 and remit the matter back to the learned Sessions Judge, Jehanabad to consider the prayer of anticipatory bail of the petitioner afresh in accordance with law, taking into consideration the facts and circumstances of the case including the nature of the offences alleged. The learned Sessions Judge, Jehanabad is required to dispose of the aforesaid ABP No. 413 of 2014 within 4

weeks from the date of receipt/production of a copy of this order.

16. It is made clear that no separate notice for hearing shall be made to the petitioner in this case as learned counsel for the petitioner undertakes that the petitioner would appear before the learned Sessions Judge along with a copy of the order within a week from today and would press his application for bail on the date fixed by the Court.

17. With the aforesaid direction and observations the application stands disposed of.

(Ashwani Kumar Singh, J)

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