

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.35993 of 2015

Arising Out of PS.Case No. -521 Year- 2013 Thana -WEST CHAMPARAN COMPLAINT District-
WESTCHAMPARAN(BETTIAH)

- =====
1. Kishore Chaudhary, son of late Chhathu Chaudhary
 2. Radhika Devi, wife of Kishore Chaudhary
- Both resident of village- Juda Sahasraw, P.S.-Bhairoganj, District- West Champaran.

.... Petitioner/s

Versus

1. State of Bihar
2. Antima Devi, wife of Rishikesh Chaudhary, daughter of Sugarim Chaudhary, resident of Village-Dharampur, PS.-Bhairoganj, District- West Champaran.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Vijay Kr Singh No. 1, Advocate

For the Opposite Party/s : Mr. Bhanu Pratap Singh(App)

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL ORDER

2 18-08-2015 Heard learned counsels for the petitioners and the State.

The petitioners being parents of husband of the complainant are apprehending arrest in connection with Complaint Case No. 521C of 2013 wherein process has been directed to be issued after cognizance being taken for the offences punishable under Section 498A of the Indian Penal Code, pending before the learned Judicial Magistrate, 1st Class, Bagaha, West Champaran.

The basic accusation is of torture.



It is submitted by learned counsel for the petitioners that the petitioners along with husband of complainant were granted anticipatory bail by learned Sessions Judge, West Champaran vide order dated 11.12.2014, passed in A.B.P. No. 146C of 2014 and 273C of 2014 as contained in annexure 2 on the undertaking of husband of complainant that he is ready to keep the complainant with dignity and honour. However, liberty was given to the learned Magistrate to cancel the bail bond on receipt of a complaint about the torturous act by the petitioners. Consequently, learned Magistrate, vide order dated 12.05.2015, on the application of the complainant that her husband failed to comply the undertaking of keeping her with dignity and honour, cancelled the bail bond of the petitioners and the husband of complainant, and issued non-bailable warrant. Consequently anticipatory bail was preferred before the learned Sessions Judge, West Champaran, which was rejected on merits vide order dated 20.05.2015 passed in A.B.P. No. 9486 of 2015. Hence, the present application for anticipatory bail.

In view of this court, the application for anticipatory bail was neither maintainable before the learned Sessions Judge nor it is maintainable before this Court, since



the petitioners were granted anticipatory bail by the learned Sessions Judge and consequently the petitioners executed bail bonds, hence they were in the deemed custody of the court once a person is permitted to remain on police bail or is granted anticipatory bail by any court he has been in deemed custody of police or the court concerned and in such circumstances his anticipatory bail application is not maintainable.

In the present case, the order dated 12.05.2015, whereby the petitioners' bail bonds were cancelled, ought to have been challenged before the appropriate forum. It is relevant to state here that the Apex Court in the case of Biman Chatterjee versus Sanchita Chatterjee and Anr. 2004 (3) SCC 388 held that the grant of bail under Criminal Procedure Code is governed by the provisions of Chapter XXXIII of the Code and the provision therein does not contemplate either granting of bail on the basis of an assurance of compromise or cancellation of bail on violation of term of compromise. The said case was also registered under Section 498A I.P.C., the bail was granted on assurance of husband to keep his legally wedded wife at her matrimonial house but his bail bond was cancelled since her husband failed to keep her in violation of

assurance given to the court. It is further held that the court should bear in mind while granting bail to impose such conditions as incorporated under Section 437(3) of the Code.

In view of the discussions made above, the anticipatory bail application of the petitioners is not maintainable. Let the petitioners surrender and pray for regular bail which will be disposed of by learned court below in view of the ratio laid down in case of Bishundeo Sahu versus the State of Bihar and Others, 2011(1)PLJR 731, paragraph No. 19 reads as follows.

“In case of non bailable offences also, similar view can be taken, in case anticipatory bail was granted for a limited period till submission of the charge-sheet. Since the accused has already surrendered before the court below for grant of anticipatory bail and has executed bail bond, as such at his instance another anticipatory bail application cannot be maintainable. He will have to surrender and pray for regular bail under Section 439 of the Code of Criminal Procedure. The court concerned, instead of taking him into custody, considering the previous order of anticipatory bail passed in his favour and also that he has not misused the privilege or his conduct in such that despite submission of charge-sheet or order taking cognizance, he is capable of granting bail, will grant him bail. In case where the anticipatory bail granted for limited period has been misused, the concerned court will have discretion, either to grant or refuse the bail. In case of non bailable offence, anticipatory bail, if granted for limited period,

the court concerned will pass order in similar manner as laid down in the case of Mahendra Pd. Singh (supra). In no case, second anticipatory bail application at the instance of such accused person is maintainable.”

However, it is made clear that in such circumstances the regular bail is only denied in case of misuse of earlier bail.

Accordingly, the present application is disposed of.

(Dinesh Kumar Singh, J)

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