

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.39125 of 2012

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Md. Jabiullah @ Masroor son of Md.Faiyaz, resident of Village Chakdariya, Police Station Lodipur (Sabour), District Bhagalpur

.... Petitioner/s

Versus

1. The State of Bihar
2. Bibi Mafruza Khatoon d/o Hafiz Md.Imran, resident of Village Kurudih, Police Station Gauradih, District Bhagalpur

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Abdul Mannan Khan, Advocate
Mr. Md. Najmul Hoda, Advocate

For the Opposite Party No.1 : Mrs. Anita Kumari, APP

For the Opposite Party No.2 : Mr. Ranjan Kumar Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL ORDER

4 30-04-2015

Heard the parties.

2. The petitioner has filed the present application under Section 482 of the Code of Criminal Procedure, 1973 invoking inherent powers of this Court for quashing the order dated 13.07.2012 passed in Complaint Case No. 2158 of 2010 by learned Sub Divisional Judicial Magistrate, Bhagalpur whereby bail granted to the petitioner in terms of Section 438 of the Code of Criminal Procedure, 1973 (in short Cr.P.C.) has been cancelled.

3. Learned counsel appearing on behalf of the petitioner submits that the petitioner apprehending his arrest in a complaint case filed by the opposite party no.2 for offences under Section 498A, 406 and some other allied offences of the Indian Penal Code as also under Section 3/4 of the Dowry Prohibition Act, had approached this Court in Cr.Misc.No. 28189 of 2011 for grant of anticipatory bail. After hearing the parties and on noticing the fact that the petitioner is working in an Arab country, the prayer for anticipatory bail made on behalf of the petitioner in the



aforesaid complaint case was allowed by order dated 24.08.2011 (Annexure-5) by a Bench of this Court (Coram: Shivaji Pandey,J.) with conditions laid down under Section 438(2) Cr.P.C. and further with condition that the petitioner shall keep on paying Rs.4000/-(four thousand) per month to the complainant in the first week of every month. It was clarified that, in case, the petitioner fails to make payment in time, the court below will be at liberty to cancel his bail bonds. However, the petitioner could not furnish the bail bonds within the time prescribed by this Court. In above view of the matter, he filed Cr.Misc.No. 4583 of 2012 seeking modification of the aforesaid order dated 24.08.2011 (Annexure-5) and for extension of time for appearing before the learned court below for the purposes of his release on bail. The aforesaid Cr.Misc.No. 4583 of 2012 was finally allowed by order dated 22.02.2012 (Annexure-5/1) and period fixed earlier for surrender was further extended by eight weeks. Other conditions were allowed to remain the same as it was indicated in the previous order.

4. Learned counsel appearing on behalf of the petitioner further submits that in deference to the order passed by this Court the petitioner is regularly making payment of Rs.4000/-(four thousand) per month to the complainant-opposite party no.2, but since he is working in a foreign country namely, Qatar, therefore, he filed an application seeking permission of the Court to leave the country and allowing him to go to foreign country for discharging duty there for earning his livelihood. It is also contended that on 13.07.2012 when the impugned order was passed, the petitioner was represented through his lawyer, yet his bail bond has been cancelled by the learned Magistrate only on the

ground that this is violation of the conditions indicated under Section 438(2) Cr.P.C.

5. Learned counsel appearing on behalf of the opposite party no.2 has opposed the prayer and has submitted that despite direction given by the learned court below the petitioner failed to appear physically on the date fixed. Therefore, there has been violation of the conditions indicated under Section 438(2) Cr.P.C. by the petitioner and the learned court below was justified in cancelling his bail bonds. However, he has not disputed that the payment of Rs.4000/- per month is being made regularly by the petitioner to the opposite party no.2.

6. After having heard the parties, this Court finds that there is no dispute that the petitioner is paying regularly Rs.4000/- per month to the complainant-opposite party no.2 which was the principal condition laid down by this Court while acceding to the prayer made on behalf of the petitioner for grant of anticipatory bail. Under Section 438 (2) Cr.P.C though several conditions are there which can be imposed while granting anticipatory bail to an accused, but from the materials available on the record, this Court does not find that the condition that the petitioner shall not leave the country without permission of the court was specifically imposed either by this Court or by the learned Magistrate.

7. In above view of the matter, this Court finds that exercise of power by the learned Magistrate for cancellation of bail bonds of the petitioner on the ground of violation of conditions imposed under Section 438(2) Cr.P.C. seems to be too technical and cannot be sustained in law. It is not the case of the parties that the petitioner had gone beyond the reach of the Court.

Apparently, he was represented through his counsel on the date when the impugned order was passed.

8. For the reasons recorded above, the impugned order dated 13.07.2012 passed in Complaint Case No. 2158 of 2010 by the learned S.D.J.M., Bhagalpur is hereby quashed and set aside. The petitioner shall be allowed to remain on the bail bonds already furnished him. However, whenever the physical presence of the petitioner is required for the purposes of disposal of the trial and the learned Magistrate passes such order, the petitioner shall be obliged to remain physically present on the date fixed and if he fails to appear in person on that date without any sufficient cause, the learned Magistrate shall be at liberty to cancel his bail bonds by recording reasons for the same.

9. In the result, the present application stands allowed with the observations and directions made above.

(Birendra Prasad Verma, J)

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