

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.17965 of 2015

Arising Out of PS.Case No. -273 Year- 2012 Thana -COMPLAINT CASE District- SHEOHAR

1. Md. Mustafa @ Md. Mustafa Sah Son of Md. Ajj Sah resident of village-
Brindawan, P.S.- Tariyani, District- Sheohar.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Afsana Khatoon wife of Late Hafiz Sah resident of village- Gopaiya, P.O.-
nayagaon, P.S. & District- Sheohar.

.... Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Vindhya Keshari Kumar, Sr. Adv.
Mr. Ravi Shankar Pathak, Adv.
For the State : Mr. Jagdhar Prasad, APP
For Opposite Party No.2 : Mr. Vijay Shankar Shrivastava, Adv.
Mr. Devendra Kumar, Adv.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 21-05-2015

The present application under section 482 of the Code of Criminal Procedure (in short 'the Code') has been filed for quashing the order dated 24.03.2015 passed by the learned District & Sessions Judge, Sheohar in Cr.Misc. No. 21 of 2014, whereby anticipatory bail granted to the petitioner vide order dated 18.04.2013 passed in A.B.P. No. 73 of 2012 in connection with Complaint Case No. C-1/273/12 has been cancelled.

2. The facts of the case, as stated in the complaint petition, is that the complainant was married to the petitioner on 07.05.2002 as



per Muslim rites and customs and out of the said wed-lock, three sons and one daughter were born. The complainant was kept well in her marital home upto 2010 but thereafter the accused persons named in the complaint started demanding Rs.1,00,000/- (Rupees one lakh) in cash and a motorcycle. Since the father of the complainant had already died, the demand of dowry being made by the accused persons could not be fulfilled. This caused annoyance to the accused persons and they started subjecting the complainant to cruelty in various ways. They tried to kill her by setting her on fire but due to intervention of the people of the locality, her life could be saved and ultimately on 07.10.2012 she was kicked out of her marital home by the accused persons after retaining all her ornaments.

3. After conducting enquiry under section 202 of the Code, the petitioner was summoned to face trial for the offence punishable under section 498-A of the Indian Penal Code. As the petitioner apprehended his arrest in connection with the aforementioned complaint case, he filed an application under section 438 of the Code before the learned Sessions Judge, Sheohar being A.B.P. No. 73 of 2012.

4. When the application for anticipatory bail of the petitioner was heard by the learned Sessions Judge, Sheohar on 18.04.2013, the complainant appeared before the court and contended

that she is living with her husband and if her husband will execute a bond to the effect that he will give Rs.2 lakhs in case he contracts another marriage, then she has no objection and she will lead matrimonial life with the petitioner.

5. The petitioner acceded to the request made by the complainant and filed a bond stating therein that he will not torture the complainant and will pay Rs.2 lakhs by way of damage to his wife in case of contract of another marriage.

6. Considering the amicable settlement between the parties, the learned Sessions Judge, Sheohar allowed the application for anticipatory bail of the petitioner vide order dated 18th April, 2013.

7. While the petitioner was enjoying the privilege of anticipatory bail, the complainant filed Cr. Misc. No. 21 of 2014 before the learned Sessions Judge, Sheohar under section 439(2) of the Code praying therein to cancel the bail granted to the petitioner vide order dated 18.04.2013 passed in A.B.P. No. 73 of 2012 on the ground that the petitioner has violated the terms of the bond executed by him before the court at the time of consideration of his anticipatory bail application.

8. The case of the complainant before the court below was that the petitioner obtained bail by playing fraud upon the court. He did not behave well with her after grant of anticipatory bail. Finally,

she was forced to leave her marital home on 30th November, 2013 and since then she is living with her widow mother and there is none to take care of her.

9. The court below has considered the aforementioned application filed by the complainant under section 439(2) of the Code and after hearing the parties, the learned Sessions Judge, Sheohar, vide order dated 24.03.2015 passed in Cr. Misc. No. 21 of 2014, cancelled the bail granted to the petitioner vide order dated 18th April, 2013 passed in A.B.P. No. 73 of 2012. The aforementioned order dated 24.03.2015 is under challenge in the present case.

10. Learned counsel for the petitioner has submitted that in the present case the complainant is using the provision of section 498-A of the Indian penal Code as a weapon rather than a shield. According to him, there is absolutely no truth behind the allegation that the petitioner ever subjected the complainant to cruelty for any demand of dowry or for any other reason. According to the complainant herself she was kept well in her marital home for about 8 years and it is beyond imagination that any person would start making demand of dowry after 8 years of marriage. He has further contended that it is a case of marital discord and incompatibility and, as a matter of fact, the complainant herself has deserted the petitioner and despite all efforts being made by the petitioner, she is not willing to live in

her marital home.

11. Further, it has been contended that there is no corroboration of oral allegation of the complainant and the court below has erred in cancelling the bail of the petitioner without holding any enquiry into the allegations made by the complainant.

12. On the other hand, learned counsel for the complainant-opposite party no.2 has submitted that the petitioner had obtained bail by playing fraud upon the court. Though he had undertaken before the court and filed a bond to the effect that he would maintain the complainant with full dignity and honour in her marital home but the said undertaking was made only in order to get a favourable order from the court. After obtaining bail, again the petitioner started subjecting the complainant to cruelty and after about 8 months she was again kicked out of her marital home. He has submitted that in view of the subsequent developments, the learned Sessions Judge has rightly cancelled the bail granted to the petitioner earlier.

13. I have heard respective counsel for the parties and perused the record.

14. The main contention of the complainant for cancellation of bail is that after obtaining anticipatory bail the petitioner again started subjecting the complainant to cruelty and kicked her out of the marital home. There is no corroboration of the oral allegation of the

complainant. In my view, since the allegation of subjecting the complainant to cruelty by the petitioner after obtaining anticipatory bail from the court below had not been substantiated, prima facie, there was no case for cancellation of bail.

15. Furthermore, cancellation of bail is a serious matter and has to be sparingly resorted to, as held by the Apex Court in *Dolat Ram & Ors. Vs. State of Haryana* [(1995)1 SCC 349]. The relevant part of the judgment in paragraph 4 reads as under :-

“4. Rejection of bail in a non-bailable case at the initial stage and the cancellation of bail so granted, have to be considered and dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted. Generally speaking, the grounds for cancellation of bail, broadly (illustrative and not exhaustive) are: interference or attempt to interfere with the due course of administration of Justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. The satisfaction of the court, on the basis of material placed on the record of the possibility of the accused absconding is yet another reason justifying the cancellation of bail. However, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial. These principles, it appears, were lost sight of by the High Court when it decided to cancel the bail, already granted. The

High Court it appears to us overlooked the distinction of the factors relevant for rejecting bail in a non-bailable case in the first instance and the cancellation of bail already granted.”

16. In the present case, the court below has failed to appreciate that there was no allegation of interference or attempt to interfere with the due course of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the petitioner. Even the allegation made by the complainant was not subjected to any enquiry and the bail has been cancelled in the manner as if it was rejecting the bail at the initial stage.

17. Moreover, I am of the view that while granting bail the court has to bear in mind the provisions prescribed under section 437 of the Code. The learned Sessions Judge could not have cancelled the bail solely on the ground that the petitioner had failed to keep up the promise made to the court as it is not open to the court to cancel the bail on a ground alien to the grounds mentioned for cancellation of bail under section 437 of the Code.

18. In *Biman Chatterjee Vs. Sanchita Chatterjee* [(2004)3 SCC 388], the Apex Court in Paragraph 7 held as under :-

“7. Having heard the learned counsel for the parties, we are of the opinion that the High Court was not justified in cancelling the bail on the ground that the appellant had violated the terms of the compromise. Though in the original order granting bail there is a reference to an agreement of the parties to have a talk of compromise



through the media of well wishers, there is no submission made to the court that there will be a compromise or that the appellant would take back his wife. Be that as it may, in our opinion, the courts below could not have cancelled the bail solely on the ground that the appellant had failed to keep up his promise made to the court. Here we hasten to observe first of all from the material on record, we do not find that there was any compromise arrived at between the parties at all, hence, question of fulfilling the terms of such compromise does not arise. That apart, non-fulfilment of the terms of the compromise cannot be the basis of granting or cancelling a bail. The grant of bail under the Criminal Procedure Code is governed by the provision of Chapter XXXIII of the Code and the provision therein does not contemplate either granting of a bail on the basis of an assurance of a compromise or cancellation of a bail for violation of the terms of such compromise. What the court has to bear in mind while granting bail is what is provided for in Section 437 of the said Code. In our opinion, having granted the bail under the said provision of law, it is not open to the trial court or the High Court to cancel the same on a ground alien to the grounds mentioned for cancellation of bail in the said provision of law.”

19. In view of the law laid down by the Apex Court in *Biman Chatterjee (Supra)*, non-fulfillment of the terms of bond executed by the petitioner at the time of consideration of anticipatory bail could not have been the basis of cancelling his bail. Even, the bond could not have been the basis of grant of bail.

20. For the reasons stated hereinabove, in my opinion, the learned Sessions Judge, Sheohar has erred in passing the impugned

order dated 24.03.2015. Accordingly, the application is allowed and the impugned order dated 24.03.2015 passed by the learned Sessions Judge, Sheohar in Cr.Misc. No.21 of 2014 is set aside.

(Ashwani Kumar Singh, J)

Pradeep/-

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