

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.3193 of 2016

Arising Out of PS.Case No. -218 Year- 2013 Thana -MADHUBANI COMPLAINT CASE District-
MADHUBANI

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Rukhsana Khatoon wife of Gulam Rabbani D/o Noor Mohammad, resident
of Village- Daldal P.S. Bheja, District Madhubani.

.... Petitioner/s

Versus

1. The State of Bihar.

2. Gulam Rabbani Son of Gulam Rasul, resident of Village- Daldal P.S.
Bheja, District Madhubani.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Gagan Deo Yadav

For the Opposite Party/s : Mr. Md. Shahnawaz Ali

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
ORAL ORDER

5 20-04-2016 Heard Sri Gagandeo Yadav, learned counsel for the

petitioner, learned A.P.P. as well as Mr. Md. Shahnawaz Ali,

learned counsel, who has appeared on behalf of the opposite party

no. 2.

The present petition has been filed with a prayer to
cancel the order dated 20.2.2015 whereby the opposite party no. 2
who was petitioner in Cr. Misc. No. 37205 of 2014 was extended
the privilege of anticipatory bail. Before proceeding , it would be
appropriate to incorporate the order dated 20.2.2015 passed in Cr.
Misc. No. 37205 of 2014 as follows:-

*“Heard Mr. Shahnawaj Ali, learned counsel
for the petitioner, Mr. M. Haque, learned A.P.P. and
Dr. Leelawati, learned counsel, who is appearing on
instruction of Sri Gagan Deo Yadav, learned counsel
for complainant / opposite party no. 2.*

The petitioner, who is husband of opposite party no. 2 has prayed for grant of anticipatory bail in Complaint Case No. C.R. No. 218 of 2013 in which cognizance order has been passed for offence under Section 498(A) and 379 of the Indian Penal Code.

In paragraph no. 6 and 7 a specific statement has been made by the petitioner that he is ready to keep the complainant with dignity and decorum.

Learned counsel, who appears on behalf of opposite party no. 2 submits that if certain conditions are imposed, there is no difficulty in extending the privilege of anticipatory bail to the petitioner.

In view of the facts and circumstances as well as the undertaking given in the petition, the petitioner namely Gulam Rabbani is directed to be enlarged on bail in the event of his arrest or surrender within a period of eight weeks from today on furnishing bail bond of Rs. 10000 (rupees ten thousand) with two sureties of the like amount each to the satisfaction of learned S.D.J.M., Jhanjharpur, in connection with Complaint C.R. No. 218 of 2013 on condition that if any complaint is made by the opposite party no. 2 regarding ill treatment, the opposite party no. 2 shall be entitled to file a petition for recall of this order.”

Despite the fact that in the earlier anticipatory bail petition in paragraph no. 6 and 7 the petitioner gave undertaking and thereafter he was granted anticipatory bail, it was complained by the petitioner of the present case that the opposite party no. 2 has taken U –turn. In earlier bail petition a specific statement was made in paragraph no. 6 and 7 which is quoted hereinbelow:-

“6. That the petitioner is husband and the husband is ready to maintain her with her livelihood and belonging with full dignity and decorum with affectionate of his loved wife. That she went to her naihar from her own sweet will and the parents and relatives put pressure to leave matrimonial house under their pressure. If she wants to live with her husband then the petitioners are ready to cooperate her.

7. That the petitioners are ready to settle the matrimonial dispute with the victim but the victim is not ready to settle the matrimonial dispute. The allegation of demand of dowry is false and concocted against the petitioner. The wife is not maintaining the conjugal life with her husband and making a conspiracy with parents and relative she left the matrimonial house to harass and vex the petitioner while the petitioner is still ready to maintain her with full dignity and decorum. ”

The petitioner has complained that after her husband who was petitioner in Cr. Misc. No. 37205 of 2014 was released in view of order of anticipatory bail passed by this court, the husband of the present petitioner after being released, started regularly threatening the petitioner and he has ultimately divorced the petitioner. She was also threatened with dire consequences if she proceeds with Complaint Case No. 218 of 2013. Accordingly, a prayer has been made to cancel the earlier bail order which was granted to the husband of the petitioner.

Learned counsel appearing on behalf of the opposite party no. 2 submits that the petitioner in paragraph no. 11 of the petition has already accepted that she has been divorced by her husband who was petitioner in the earlier case. According to learned counsel for the opposite party no. 2 after divorce the case will be guided by the Muslim Personal Law. He further tried to persuade the Court to transmit the record to the conciliation centre.

Besides hearing learned counsel for the parties, I have also perused the materials available on record. Even though the opposite party no. 2 / husband of the petitioner, who was petitioner in earlier anticipatory bail petition has appeared, no counter affidavit has been filed and orally submission was made that since divorce has already been taken place, no question arises for cancelling the bail order. Once in earlier anticipatory bail petition a specific pleading was made by the husband that he will keep his wife with full dignity and affection and immediately after release on anticipatory bail the petitioner has taken U-turn certainly it amounts that opposite party no. 2 on oath had made a false statement, the husband of the petitioner on oath in earlier anticipatory bail petition had made a false statement. In such situation in normal course besides passing an order for recalling the earlier order i.e. order dated 20.2.2015 whereby the husband of the petitioner was extended the privilege of anticipatory bail with certain conditions this court would have also directed the Registrar General to initiate prosecution against the husband of the petitioner for making false statement on oath, however, this court is refraining to direct for taking any action in respect of incorrect statement made in earlier anticipatory bail. However, since earlier anticipatory bail was granted in view of

statement made in paragraph no. 6 and 7 of the earlier anticipatory bail which has been quoted hereinabove as well as undertaking given on behalf of the husband of the petitioner obviously in case of violation of the earlier conditions the order of grant of bail is required to be recalled. Accordingly, the present petition is allowed and bail granted to the husband of the petitioner namely Gulam Rabbani in Cr. Misc. No. 37205 of 2014 on 20.2.2015 is hereby recalled with a direction to the court below to take appropriate step against opposite party no. 2, namely Gulam Rabbani (the husband of the petitioner) in accordance with law.

The petition stands allowed.

(Rakesh Kumar, J)

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