

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.52136 of 2015

Arising Out of PS.Case No. -28 Year- 2014 Thana -MAHILA PS District- GAYA

=====

Md. Iqbal Hussain @ Rashid Hussain son of Nanhu Mian @ Sattar Hussain,
resident of Mohalla- Katari Road, Islamganj, P.S.- Chandauti, District- Gaya

.... Petitioner/s

Versus

1. The State of Bihar
2. Sufi Khatoon daughter of Md. Barik Hussain, wife of Md. Iqbal Hussain @
Rashid Hussain, resident of village- Parariya, P.O.- Panchanpur, P.S.- Tekari,
District- Gaya

.... Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Sanjay Kumar, Advocate
For the State : Mr. Shyam Bihari Singh, APP
For Opposite Party No. : Mr. Arvind Kumar Singh, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 09-05-2016

The petitioner has been made accused in connection with Mahila P.S. Case No.28 of 2014 dated 9.9.2014 registered inter alia under Sections 498A of the Indian Penal Code and 3 and 4 of the Dowry Prohibition Act. In course of investigation, he was arrested by the police on 10th November, 2014. When he was produced before the court of Magistrate, he was remanded to judicial custody. Subsequently, he moved an application for bail which was allowed by the learned Magistrate subject to the condition that one of the sureties must be the informant Sufi Khatoon (wife of the petitioner) and that he shall keep his wife with full dignity and honour and will perform

all matrimonial obligations towards her. In the light of the aforesaid order dated 11.12.2014, the petitioner furnished an undertaking before the court and the informant stood as one of the sureties pursuant to which the petitioner was directed to be released.

2. It would appear from the record that while in matrimonial home some dispute arose once again between the petitioner and his wife. The parties have levelled allegation and counter allegation against each other. The petitioner took a plea that his wife always used to subject him to cruelty whereas his wife took a plea that she was not being kept well in her matrimonial home. Ultimately, the wife of the petitioner left her matrimonial home and filed an application before the court of Magistrate stating therein that she is withdrawing herself as a surety for the petitioner in the case. Taking into consideration the stand of the wife of the petitioner, the learned Magistrate has cancelled the bail granted to the petitioner vide impugned order dated 22.9.2015.

3. It has been submitted by the learned counsel for the petitioner that imposing an onerous condition for grant of bail is bad in the eye of law. Since the petitioner was granted bail, he was left with no option but to agree whatever condition was imposed by the court. However, there was always matrimonial discord and incompatibility between the parties and it became difficult for the



petitioner to satisfy all the desires of the complainant despite his best efforts in this regard. The petitioner tried his level best to keep his wife with full dignity and honour, but out of her own sweet will she left her matrimonial home and a report in this regard was also filed in the court of Magistrate which had summoned a report from the Mahila Police Station. It is submitted that the report of the Mahila Police Station furnished before the court would further indicate that there was no fault on the part of the petitioner.

4. Opposing the application filed on behalf of the petitioner, learned counsel for the complainant has submitted that since the petitioner has violated the undertaking given to the court, the learned Magistrate has rightly cancelled the bail bond of the petitioner in exercise of power conferred under Section 437(5) of the Cr.P.C..

5. I have heard respective counsel for the parties and perused the materials available on record.

6. In my opinion, the condition imposed by the learned Magistrate, while granting bail to the petitioner was erroneous one. This Court as well as the Hon'ble Supreme Court has repeatedly held that onerous condition cannot be imposed for grant of bail. I also find that the learned Magistrate was not correct in imposing the condition that the complainant of a case should stand surety for the accused. Such a condition for grant of bail cannot be approved under any

circumstances. In that view of the matter, I find that the reason assigned for cancellation of bail of the petitioner vide impugned order dated 22nd September, 2015 cannot be justified.

7. In my opinion, the application deserves to be allowed and is allowed, accordingly. The order dated 22.9.2015 passed by the learned Magistrate is set aside. The petitioner may appear before the learned Magistrate and furnish bail bond to the satisfaction of the learned Magistrate.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	
Transmission Date	