

\$~15

* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ BAIL APPLN. 2799/2015
ROHIT ARORA

..... Petitioner

Through: Mr Davinder Kumar, Adv.
versus

THE STATE

..... Respondent

Through: Mr Ashok Kumar Garg, Additional Public
Prosecutor for the State alongwith ASI
Dharamvir Singh Police Station CWC
Nanakpura, New Delhi
Mr Avijit Singh, Adv. for complainant
alongwith complainant in person

CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

ORDER

% 10.02.2016

Crl. MA 1861/2016 (by complainant/applicant to direct the petitioner to pay the school fees of daughter)

Vide this application, the complainant seeks directions to the petitioner to pay school fees and transportation charges of her daughter.

On the last date of hearing, the counsel for the petitioner sought time to take instructions from the petitioner as to how much amount can be paid to the complainant towards school fees and transportation charges without prejudice and subject to future adjustment.

Today, learned counsel for the petitioner, under instructions, submits that the petitioner is not in a position to pay any school fees or transportation charges of the minor child.

Learned counsel for the complainant submits that by concealment of material facts, the petitioner succeeded in taking stay order on his cancellation of bail and misusing concession of the same.

Before going to the aforesaid submissions, it will be relevant to note the chequered history of the case.

The petitioner got married with the complainant on 27.11.2004 and a girl child baby Shreya Arora was born out of the wedlock on 04.04.2006. A complaint was filed by the complainant on 30.04.2010 before the CAW Cell, Nanakpura, Delhi resulting in registration of FIR No.141/2010 under Sections 498A/406/34 IPC. An application for anticipatory bail was moved by the petitioner. The petitioner offered to pay a sum of Rs.2,50,000/- by way of demand draft to the complainant within one week. As such application was allowed. It seems that

thereafter application for grant of regular bail was moved by the petitioner which was strongly opposed by the complainant on the ground that petitioner was not paying maintenance as awarded by the Family Court vide order dated 08.07.2011 and arrears of about Rs.12,85,000/- have accrued. The petitioner was admitted to bail subject to various conditions including payment of Rs.5 lac to the complainant which was to be adjusted towards arrears of maintenance as awarded by Family Court.

During the pendency of those proceedings, the parties settled their grievances and started living together. In view of the settlement, the complainant withdrew the complaint under Section 125 Cr.PC; Section 9 of HMA Act and Execution Petition under Section 24 of the HMA Act from the Family Court. The case under Section 12 of the Domestic Violence Act was also withdrawn by her. Thereafter, Crl. MC No.1613/2015 was filed by the petitioner for quashing of the aforesaid FIR wherein notice was issued to the complainant. The complainant thereupon moved an application for cancellation of bail on the ground that on the assurance of the petitioner she had dropped all criminal cases against him and his family members except this case. She was awarded maintenance of Rs.42,000/- per month, which order has been upheld up to the Hon'ble Supreme Court. It was alleged that in order to escape the payment of maintenance, she was taken back to the matrimonial house but again she was ill-treated, harassed, beaten and administered threats which resulted in registration of following FIRs:

- (i) FIR No.700/2014 Police Station Bharat Nagar under Section 354A/509/34 IPC
- (ii) FIR No.134/2015 under Section 324/506/201/34 dated 07.03.2015

After calling for the status report, the learned Metropolitan Magistrate vide order dated 24.07.2015 cancelled the bail of the petitioner by observing as under:

“Accused Rohit was granted bail vide order dated 19.07.2013 subject to the condition, inter alia, that he shall pay Rs.5 lacs to the complainant towards arrears of maintenance as ordered by Ld. Family Court. This payment has not been made till date. Apart from the non-fulfilment of this condition, which was sine qua non for grant of bail, accused has misused his liberty blatantly. Not one but two FIRs have been registered against the accused / his associates for physically abusive the complainant. The last FIR bearing no.134/15 Police Station Bharat Nagar carries serious allegations of assault of complainant with a knife. During investigation, he has also been found to have come home in a drunken

condition.

It is to be borne in mind that complainant and accused no.1 have a young daughter. The conduct of accused no.1 is not only hazardous to the safety of complainant but also the little child. It is seen that even after this court took a lenient view by releasing accused Rohit without first compliance of the order dated 19.07.2013, he has made no attempts to comply with the said order and has rather continued to abuse complainant. He has repeated the illegal acts with which he was charged with in the present FIR. Accused cannot be allowed to misuse his liberty with impunity.

This is a fit case where bail of accused ought to be cancelled not only on the ground of non-fulfilment of conditions of bail but also because of utter misuse of freedom and disregard of law.”

Thereafter, an application under Section 439 Cr.PC was moved by the petitioner seeking bail. During the course of arguments, the petitioner agreed to pay a sum of Rs.2.5 lac to the complainant and to pay arrears of school fees and transportation charges qua the baby child Sherya Arora and undertook to pay the said charges in future as and when they accrue. He further undertook to pay the sum of Rs.2.50 lac to the complainant in two equal instalments of Rs.1.25 lac each alongwith arrears of school fees and transportation charges within ten days from the date of the order i.e. 03.08.2015. On the aforesaid undertaking given by the petitioner, the complainant gave no objection to grant of bail to the petitioner. Thereafter, the petitioner was admitted to bail by learned Additional Sessions Judge vide order dated 03.08.2015.

Thereafter, the complainant moved an application for cancellation of bail of the petitioner on the ground that the petitioner had failed to honour the undertaking given by him before the learned Additional Sessions Judge. At that time, learned counsel for the petitioner submitted that he had cleared the school fees of his daughter till the month of September, 2015 and the amount of Rs.2.5 lac has also been paid pursuant to the order dated 29.01.2011 by way of demand draft. He further stated that the circumstances has changed since passing of the order as his mother has expired and he is not having financial capacity to honour the statement made by him in the bail order dated 03.08.2015. It was admitted by counsel for the complainant that the school fees was paid till September, 2015 but the annual charges were not paid and further fees for the period from October, 2015 till December, 2015 was also not cleared. The amount of Rs.2.5 lac which

was paid by the petitioner on 29.01.2011 has no bearing on the order dated 03.08.2015 and the amount of Rs.2.5 lac was not paid by the petitioner. After taking note of these submissions, learned Additional Sessions Judge vide order dated 10.12.2015 cancelled the bail of the petitioner granted to him vide order dated 03.08.2015 and he was directed to surrender before the Investigating Officer /concerned court.

Thereafter, the petitioner filed the present petition challenging this order passed by learned Additional Sessions Judge and sought waiver of the condition to pay Rs.2.5 lac, school fees and transportation charges of baby Sherya Arora. It was submitted by counsel for the petitioner that the petitioner is willing to settle the matter but the complainant was not present and, therefore, vide order dated 23.12.2015, while granting interim protection to the petitioner, the matter was adjourned for 11.03.2016. In the meanwhile, the complainant moved CrI. MA 633/2016 seeking her impleadment in the petition and another CrI. MA No.632/2016 for vacation of the order on the ground that the petitioner has defaulted/failed to honour the repeated assurances and undertakings given of his own volition to the Court. The details of continuous defaults and non-compliance were given by stating that vide order dated 19.07.2013, learned Metropolitan Magistrate had directed the petitioner to pay a sum of Rs. 5 lacs towards arrears of maintenance i.e. totalling Rs.12.85 lacs @ Rs.42,000/- per month. On 23.07.2013, the petitioner made a statement that he had given post-dated cheques for Rs.1 lac dated 26.07.2013 and undertook to pay Rs. 1.5 lac by 26.08.2013; another Rs.1 lac by 23.09.2013 and the balance amount of Rs.1.5 lac by 24.10.2013. Out of the same, only Rs.1 lac was paid vide cheque dated 26.07.2013. The other undertakings were defaulted and the same continued till date. It was also stated that the petitioner played a trick of reconciliation upon the complainant with a view to avoid making any payment to her and the minor daughter and the complainant was compelled to withdraw the petitions filed by her. However, the petitioner resumed his earlier behaviour of ill-treating the complainant. A series of atrocities continued resulting in following complaints against the petitioner:

- (i) FIR No.700/2014 Police Station Bharat Nagar under Section 354A/509/34 IPC dated 06.12.2014
- (ii) FIR No.134/2015 under Section 324/506/201/34 dated 07.03.2015
- (iii) FIR No.514/2015 under Section 323/380/34 dated 18.09.2015.

She was also administered threats which compelled her to file an application for cancellation of bail dated 11.04.2015 and 18.05.2015 and vide order dated 24.07.2015, the bail was cancelled and he was taken in custody. He again applied for bail and offered to pay a sum of

Rs.2.5 lac in two equal instalments; arrears of fees and transportation charges of Shreya Arora within ten days and to pay regular school charges as and when accrued. However, he again defaulted and a written notice dated 19.08.2015 was sent by the principal of the school for non-payment of the annual charges. He also defaulted in payment of school fees for six months and charges with the result the child is subjected to continuous humiliation in her school including withholding of report card. He also disconnected the CCTV wires, electricity, water and DNG connection. He remained absconding and ultimately, the State as well as the complainant had to apply for issuance of non-bailable warrants. Vide order dated 22.12.2015 NBWs were issued against the petitioner but this fact was suppressed when the matter was taken up for hearing in this court on 23.12.2015. With sinister motives, the petitioner and his co-accused sold the shop at 1558/1, Bhagirath Palace, Chandni Chowk, Delhi having a current value of Rs.4 crores but showing the amount in white as only Rs.16 lacs (copy of sale deed filed). It does not lie in the mouth of the petitioner to allege that he is going through financial crisis as he and his father are doing money lending business and are not earning less than Rs.95,000/- per month as far back as in 2011, with the result, the amount of Rs.42,000/- per month was fixed which was upheld by the Hon'ble Supreme Court. Not only that, only last year he upgraded his Honda City car to the latest Model Honda Amaze and is paying more than Rs.12,000/- per month as EMI every month (copy of loan paper enclosed).

Learned counsel for the petitioner submitted that 25% of the property has already been gifted by the mother of the petitioner to the complainant. The petitioner is having 50% alongwith complainant and the petitioner is ready and willing to settle all the disputes by transferring his 25% share in favour of complainant. In this regard, counsel for the complainant submits that the petitioner has already filed a suit for injunction against the complainant. Counsel for the petitioner admitted that the petitioner had sought restrain order against the complainant not to dispose of her 25% share of the property as the same is undivided. Counsel did not dispute that the complainant is a housewife and has no source of income. She has the responsibility of maintaining a child as well. The petitioner being the husband/father of complainant/child has a moral as well as legal duty to maintain them but is shirking away from fulfilling his obligation. It seems that at every juncture, he has been able to obtain relief on the assurances / undertakings given by him before the courts that he will pay certain amount to the complainant and will pay the school fees and transportation charges of the child but such assurances are given only as a device to seek relief but not to fulfil the same. The submission of learned counsel for the petitioner that while granting bail no such onerous condition could have been imposed upon the

petitioner is without substance as a narration of aforesaid orders goes to show that no such conditions were imposed by any of the courts while granting relief to the petitioner. In fact, it was the petitioner himself who had been offering to pay the money / school fees or transportation charges. If the petitioner volunteers to make such payment and thereby is able to get favourable orders, then it is incumbent upon him to abide by those assurances, but the aforesaid narration of facts clearly depicts that at every juncture, the petitioner has flouted the assurances / undertakings given by him before several courts. A person who misuses the concession of bail granted to him cannot be allowed to enjoy the same.

Under the circumstances, the interim protection granted to the petitioner vide order dated 23.12.2015 stands vacated.

Counsel for the petitioner states that in view of vacation of interim order, nothing survives in this bail application and the same be disposed of accordingly.

Accordingly, the petition bearing number 2799/2015 as well as pending applications stand disposed of.

The date 11.03.2016 fixed in the matter stands cancelled.

A copy of this order be given *dasti* to counsel for the parties.

SUNITA GUPTA, J

FEBRUARY 10, 2016/*rd*