

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.15958 of 2017

Arising Out of COMPLAINT CASE No. -1113 Year- 2015 District- SARAN

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Murli Sah Son of Shri Harendra Sah, Resident of Village- Purshottampur, Tole Najirganj, P.S.- Janta Bazar, District- Saran, presently residing at Room No. 9, Chawl No. 3, Rebellow Chawl, Gaondevi Road, Polsar Kandiwalli [e], P.S.- Santa Nagar [Kandiwalli East], District- Mumbai- 400101.

.... Petitioner

Versus

1. The State of Bihar.
2. Putul Sah, Wife of Murli Sah, Daughter of Chandrakhet Sah, Resident of Village- Purshottampur, Tole Najirganj, P.S.- Janta Bazar, District- Saran, Presently residing at Village- Hashanpura, P.S.- Marhowrah, District- Saran.

.... Opposite Parties.

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Appearance :

For the Petitioner/s	:	Mr. Vikash Kumar Sharma, Advocate Mr. Jitendra Kumar, Advocate
For the State	:	Mr. Jharkhandi Upadhyay, APP
For the O.P. No.2	:	Mr. Sanjay Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT
Date: 24-11-2017

This application under Section 482 of the Code of Criminal Procedure (for short 'Cr.P.C.') has been filed by the petitioner for quashing the order dated 22.02.2017 passed by the learned Sub-Divisional Judicial Magistrate, Saran at Chapra in Trial No. 2281 of 2017, arising out of Complaint Case No. 1113 of 2015 in which the petitioner and others have been summoned to face trial for the offence punishable under Section 498-A of the Indian Penal



Code.

2. It is submitted by the learned counsel for the petitioner that in view of the law laid down by this Court in **Salim Ansari @ Md. Salim Ansari & ors. vs. State of Bihar & Anr. [2015(2) PCCR 298]**, the petitioner appeared before the Court of learned Sub-Divisional Judicial Magistrate, Saran after he was summoned to face trial. On such surrender, the learned Sub-Divisional Judicial Magistrate granted him provisional bail initially for a period of two months, vide order dated 17.08.2016, which was extended from time to time till 22.02.2017. Between 17.08.2016 and 22.02.2017, as directed by the Court, the petitioner appeared before the Court in person on five occasions. However, on 22.02.2017 an application under Section 317 of the Cr.P.C. was filed on his behalf for dispensing with his personal attendance on the ground that he had fallen ill and had been advised to take rest by the doctor. Medical prescriptions were also annexed along with the application filed under Section 317 of the Cr.P.C., but without dealing with the said application and without rejecting the same, the learned Sub-Divisional Judicial Magistrate cancelled the bail bond of the petitioner, vide order dated 22.02.2017.

3. Learned counsel for the petitioner submitted that the



impugned order passed by the learned Sub-Divisional Judicial Magistrate is bad in law as also on fact. He submitted that once there was an application for dispensing with personal attendance, the court ought to have passed order on the petition first and, only thereafter, it could have cancelled the bail bond of the petitioner.

4. Learned counsel for the petitioner submitted that the petitioner is a law abiding citizen and except a case of matrimonial dispute leading to his involvement in a case under Section 498-A of the Indian Penal Code, no case is pending against him. He submitted that the petitioner is ready to appear before the court on any date as per direction of the Court.

5. On the other hand, learned counsel appearing for the complainant/ opposite party no. 2 submitted that the petitioner was granted provisional bail on the ground that he will take his wife to her matrimonial home, but he has failed to comply with the order of the Court on one pretext or the other.

6. I have heard learned counsel for the petitioner and carefully perused the record.

7. I find substance in the submission made by the learned counsel for the petitioner. Once, there was an application filed under Section 317 of the Cr.P.C. by the petitioner, it was incumbent



upon the court first to deal with the same and only after passing order on the petition, the Court could have cancelled the bail bond. It would be manifest from the impugned order that having noticed the filing of an application under Section 317 of the Cr.P.C, the court below has ignored the same and has cancelled the bail bond of the petitioner on the ground of his non-appearance in the Court.

8. Apparently, the impugned order has been passed mechanically without judicial application of mind. I am also of the opinion that in a case under Section 498-A of the Indian Penal Code, the Court cannot impose a condition that the accused facing the trial must take back the complainant to her matrimonial home for grant of bail.

9. In view of the above discussion, the impugned order dated 22.02.2017 passed by the learned Sub-Divisional Judicial Magistrate, Saran at Chapra in Trial No. 2281 of 2017 is set aside. The petitioner shall be deemed to be on provisional bail till 18th December, 2017 on the bond and sureties already furnished earlier. The petitioner is directed to appear before the Court of learned Sub-Divisional Judicial Magistrate, Saran, Chapra on 18th December, 2017, the date on which the court below shall deal with his application for bail in accordance with law in the light of the



observations made hereinabove.

10. With the aforesaid observation and direction, the application is disposed of.

(Ashwani Kumar Singh, J.)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	01.12.2017
Transmission Date	01.12.2017

