

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.32065 of 2014

Arising Out of PS.Case No. -523 Year- 2011 Thana -GAYA COMPLAINT CASE District- GAYA

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Rajdeo Das, Son of Jalan Das Resident of village - Khasara, P.S. Imamganj,
District - Gaya

.... Petitioner/s

Versus

1. The State of Bihar
2. Kiran Devi, Wife of Rajdeo Das Resident of village - Gidha, P.S. Pratappur,
District - Chatra, Present Address - D/O Rajendra Das, resident of village - Simari,
P.S. Dumaria, District - Gaya

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.

For the Opposite Party/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 04-07-2017

Heard learned counsel for the parties.

2. The petitioner is challenging order dated 15.05.2014
passed by Sri Rajiv Kumar, Judicial Magistrate, 1st Class, Gaya in
Complaint Case No. 523 of 2011, whereby he has cancelled the bail
of the petitioner and directed to issue non-bailable warrant against
him.

3. Learned counsel for the petitioner submits that
petitioner, who is the husband of the complainant, was granted
anticipatory bail by the learned Sessions Judge, Gaya vide order dated
10.05.2012 passed in A.B.P. No. 165 of 2012 and the learned
Magistrate cancelled the bail on the ground that maintenance amount
of Rs. 1000/- is not being deposited by the petitioner in the court. He
further submits that even a petition for cancellation of bail was



not filed by the complainant in fact a compromise petition was filed in this case before the trial court and both are living together.

4. It appears that it is not a case of misuse of privilege of bail rather of not depositing the maintenance amount in the court. Even no petition was filed by the complainant for cancellation of bail on any ground. It is also not a case of tampering with evidence or threatening of witnesses. In the present case, anticipatory bail was granted to the petitioner by the Sessions Court and the petitioner had not jumped the bail so cancellation of bail by the Judicial Magistrate on the ground of not paying maintenance to wife was not proper. The anticipatory bail was granted to the petitioner under Section 438 Cr.P.C. and not under Section 437 Cr.P.C. So a petition for cancellation of bail may be filed before the court of sessions or High Court under Section 439(2) of Cr.P.C. for violation of any conditions, if any.

5. For the aforesaid reason, the impugned order is set aside and the petitioner is allowed to remain on bail earlier granted to him by the Sessions Court. This application stands allowed.

(Arun Kumar, J)

Sujit/-

AFR/NAFR	NAFR
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