

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.27247 of 2017

Arising Out of PS.Case No. -17 Year- 2017 Thana -KUSHESHWARSTHAN District-
DARBHANGA

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Rajo Devi, wife of Jitendra Sah, Resident of village-Salha, P.S. Bithan,
District-Samastipur, Bihar.

.... Petitioner

Versus

1. The State of Bihar,
2. Ajit Kumar Yadav, Son of Lakhan Yadav, Resident of village-Padhari,
P.S. Baheri, District- Darbhanga, Bihar.

.... Opposite Parties.

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Appearance :

For the Petitioner/s : Mr. Abhishek Kr. Gupta, Advocate.
For the Opposite Party/s : Mr. Tarkeshwar Nath Thakur, APP.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2 14-06-2017 Heard Sri Abhishek Kumar Gupta learned counsel

for the petitioner and Sri Tarkeshwar Nath Thakur learned A.P.P.

for the State.

The petitioner, in the present case, has prayed for setting aside or modifying the conditions imposed by learned A.C.J.M, Biraul (Darbhanga), whereby and whereunder while granting regular bail to the petitioner the learned A.C.J.M, Biraul (Darbhanga) imposed a condition that the informant shall be one of the bailors for the accused/petitioner. The petitioner also assails the order passed by learned District and Sessions Judge, Darbhanga in Criminal Miscellaneous No.23 of 2017 by which the prayer of the petitioner to modify the bail order has been refused.



The facts of the case as disclosed would show that the petitioner was caught while stealing the ornaments of the sister-in-law of the informant. She was brought to Police Station and then present case was registered under Sections 379 and 411 of Indian Penal Code. On 03.03.2017, an application for regular bail along with a joint compromise petition, as contained in Annexure-2/a was filed in the Court of learned A.C.J.M, Biraul (Darbhanga). The learned A.C.J.M, Biraul (Darbhanga) passed an order dated 03.03.2017 by which he allowed the regular bail of the petitioner with one of the conditions that the informant would be one of the bailors. The order passed by the learned A.C.J.M, Biraul (Darbhanga) reveals that the informant was present in the Court and accepted that the case has been compounded.

Being aggrieved by one of the conditions of bail to place the informant as a bailor, this petitioner moved an application for modification of the order as the informant was not willing to be a bailor to the petitioner and this condition was not a reasonable condition. The learned Judicial Magistrate, 1st Class to whom the case was transferred, however, rejected the application vide order dated 06.03.2017, annexed as Annexure-3 to the application.

Thereafter, the petitioner moved Criminal Miscellaneous No. 23 of 2017 before the learned District and



Sessions Judge, Darbhanga for the modification of the order dated 03.03.2017 passed by learned A.C.J.M, Biraul (Darbhanga), however, the same was dismissed vide order dated 16.03.2017, enclosed as Annexure-4 to the present application.

Assailing the order passed by the learned A.C.J.M, Biraul (Darbhanga) and then the learned District and Sessions Judge, Darbhanga, as contained in Annexure-2/b and 4, respectively, the learned counsel for the petitioner submits that because of an unreasonable and unwarranted condition imposed by the learned A.C.J.M, Biraul (Darbhanga), the petitioner is languishing in jail despite compromise in a compoundable offence whereunder she ought to have been acquitted by virtue of Section 320 (8) of the Code of Criminal Procedure. It is further submitted that since 03.03.2017 every day detention of the petitioner in prison is illegal and is in violation of Article 21 of the Constitution of India.

This Court perused the order dated 03.03.2017 passed by learned A.C.J.M, Biraul (Darbhanga), the order dated 06.03.2017 passed by learned Judicial Magistrate, 1st Class and then the order dated 16.03.2017 passed by learned District and Sessions Judge, Darbhanga. No reason has been assigned by the learned A.C.J.M, Biraul (Darbhanga) in his order as to why the informant should be one of the bailors in order to get the privilege



of bail by this petitioner. In the case of **Suman Gupta and Ors. v. State of J. & K. and Ors., reported in (1983) 4 Supreme Court Cases 339**, the Hon'ble Apex Court in paragraph No. 6 inter alia observed as under:-

“..... A stream of case law radiating from the now well known decision of this Court in Maneka Gandhi v. Union of India (1978)2 SCR 621;(1978) 1 SCC 248: AIR SC 597 has laid down in clear terms that Article 14 of the Constitution is violated by powers and procedures which in themselves result in unfairness and arbitrariness. It must be remembered that our entire constitutional system is founded in the rule of law, and in any system so designed it is impossible to conceive of legitimate power which is arbitrary in character and travels beyond the bounds of reason.”

Thus relevance and reasons are the twin principles of our Constitution, which must be followed while passing an administrative, quashi judicial or judicial order. In the present case, while no reason was assigned by the learned A.C.J.M, Biraul (Darbhanga), the learned Judicial Magistrate, 1st Class also refused to modify the condition by simply stating that he does not find it fit to interfere with the said condition. Surprisingly, the



learned District and Sessions Judge, Darbhanga has rejected the Miscellaneous Application on the ground that imposition of condition is the discretion of the Magistrate. Apparently, learned District and Sessions Judge, Darbhanga has not considered as to whether the condition imposed is an onerous and unreasonable condition which should not have been there in the facts of the present case.

In a catena of decisions such as (1) *Sheikh Ayub v. State of M.P.* (2004) 13 SCC 457; (2) *I.Glaskasen Grace and ors. v. Inspector of Police and Anr.* (2009)12 SCC 769; (3) *Ramathal and ors. v. Inspector of Police and Anr.* (2009)12 SCC721; (4) *Sandeep Jain v. National Capital Territory of Delhi Rep. by Secretary Home Department* (2000)2 SCC 66, the Hon'ble Supreme Court has laid down the principles as regard conditions which should or should not be imposed while granting anticipatory bail or regular bail. In Criminal Miscellaneous No.52136 of 2015 (Md. Iqbal Hussain @ Rashid Hussain v. The State of Bihar and Anr.), a co-ordinate Bench of this Court took a similar view that the complainant of a case cannot be asked to stand surety for the accused. The Hon'ble Apex Court has considered this aspect of the matter and has always cautioned the Courts imposing conditions for grant of bail that those conditions should not be onerous and unreasonable so as to deprive the



accused from the privilege of bail even after order of his release. The orders passed by the learned A.C.J.M, Biraul (Darbhanga) directing the informant to be a bailor for the accused cannot be said to be a reasonable condition for grant of bail particularly when the informant himself appeared in the Court and filed the application showing the compromise and compounding of the offences in terms of Section 320 (8) of Code of Criminal Procedure. The condition is onerous and unreasonable which has even escaped the attention of the learned District and Sessions Judge, Darbhanga, who has rejected the Miscellaneous Application on an erroneous consideration. The learned District and Sessions Judge, Darbhanga could not appreciate that the word 'discretion' is not a word of magic. The discretion must be applied judiciously in accordance with law and in the interest of justice. In the present case, this Court is of the opinion that both the courts below have committed grave error in imposing an onerous and unreasonable condition for bail which resulted in this prolonged detention of the petitioner.

The orders impugned in so far as it prescribes a condition that informant shall be one of the bailors cannot sustain the test of reasonableness; hence those are hereby set aside. As a result thereof, while saving the order granting regular bail to the petitioner, this Court would modify the terms and conditions and



in place of the 'informant' any other person having no criminal antecedent may stand as a surety.

Let a copy of this order be sent to the learned District and Sessions Judge, Darbhanga, who will circulate the same among the judicial officers to ensure that the conditions imposed for bail always be a reasonable one and no onerous and unreasonable condition which is likely to deprive an accused of his/her liberty be imposed.

The application is, accordingly, allowed to the extent stated hereinabove.

(Rajeev Ranjan Prasad, J.)

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