

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.12012 of 2017

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1. Dr. Shayan Ahmad @ Shayan Ahmad, Son of Late Dr. S. Ahamad,
resident of Mohalla- Kotwachok, P.S. Town, District- Jehanabad.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Fauzia Arshi, D/o Late Zayauddin Mallik, resident of H.N. B/155. Road
No. A/11, Ali Nagar Colony, P.S. Gardanibagh, District- Patna.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. B.P. Pandey, Sr. Advocate
Mr. Mukesh Kumar Singh, Advocate
For the Opposite Party/s : Mr. J.N. Thakur

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**CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR
SINGH**
ORAL ORDER

2 22-03-2017 Heard learned senior counsel for the petitioner,

learned counsel for the informant and learned APP for the State.

The present application has been filed for
modification of the order dated 15.3.2016 passed in Cr. Misc. No.
4212 of 2016 whereby the petitioner being husband of the
informant was granted provisional anticipatory bail for six months
in a case registered for the offences under section 498A of the
Indian Penal Code and sections 3 and 4 of Dowry Prohibition Act.

The basic accusation is of torture for non fulfillment of
dowry demands.

The petitioner was granted provisional anticipatory
bail for six months on submission of learned counsel for the



petitioner that the petitioner admits his marriage with the informant and is ready to keep the informant as wife with full dignity and honour, coupled with statement to that effect being made in paragraph 9(v) of the main petition which reads as –

“That the petitioner is still ready to keep the informant with himself if she live with this petitioner peacefully with dignity at home and not to run away to her sister house etc etc.”

And further submission that he has not performed second marriage coupled with statement made in paragraph 9(iv) which reads as –

“That the petitioner found that the informant was not interested to live with him and old mother only in family and going always out side of the country to her sister at USA and Delhi and in spite of attempt of this petitioner and filing application before Emarate Sariya, refused by her and thereafter filing this false case, and as such the old mother was facing too much problem for want of lady at home to see her and this petitioner, and as the informant was away for the last two years from the house of this petitioner, upon the advice of her mother this petitioner arranged for his 2nd marriage. But no marriage was solemnized.”



It was submitted by learned counsel for the informant that the informant is ready to accept the offer of the petitioner. Consequently, both sides agreed to appear before the learned court below on 30.3.2016 when the petitioner was supposed to take the informant to keep her with him with dignity and honour. The petitioner was granted provisional anticipatory bail. The provisional bail of the petitioner was to be confirmed by the learned court below in three eventualities, i.e. (i) on substantial restoration of the matrimonial harmony,(ii) or if the informant gets reluctant to reconcile the issue and (iii) or if the informant fails to appear before the learned court below with further rider that the provisional anticipatory bail will not be confirmed by the learned court below if substantial proof comes that the petitioner has performed second marriage and in that eventuality, the petitioner will surrender and pray for regular bail.

It is submitted by learned senior counsel for the petitioner that in pursuance to this court's order, the petitioner appeared before the learned court below on 30.3.2016 and expressed the willingness to take the informant from the court below to his house but on one pretext or the other the informant refused to resume the conjugal life. After 30.3.2016, the case was fixed for 30.4.2016 for reconciliation. Thereafter, on the direction



of the learned court below, both the parties appeared before the court on 30.4.2016 but the informant was reluctant to go with the petitioner to Jehanabad on the pretext that the petitioner usually resides at Patna but after the reconciliation the informant shown her willingness to go with the petitioner but after coming out of the Chambers of the learned court below a petition was filed levelling accusation of pronouncing triple Talaq by the petitioner. The affidavited petition filed by the informant before the learned court below on 30.4.2016 reflects that it was stamped by franking machine on 12.4.2016 which suggests that the petition was prepared much before 30.4.2016 but participating in reconciliation and giving an impression that she was ready to resume the conjugal life was simply a false pretence.

It is further submitted that the order dated 28.7.2016, passed by learned court below in Gardanibagh P.S. Case No. 370 of 2015 as contained in Annexure 3, reflects that a petition on behalf of informant for cancellation of bail bonds of the petitioner was filed. The same was disposed of by considering the stand of the petitioner that he not only denied the factum of Talaq but was also ready to keep the informant and thereby this court was of the view that the petitioner has not misused the privilege of bail. The relevant portion of the order of the learned court below dated



28.7.2016 reads as follows:

“Perused the case records, so far the allegation of “Triple Talaq” is concern this is the factual issue as the accused denying the same. Moreover this court has no power and jurisdiction to establish or denying the factum of Divorce between the parties. The fact of “Talaq” is disputed between the parties. Hence this court cannot decide cancellation of bail bond on the basis of “Triple Talaq”.

Now so far second issue is concerned, the main ground of the informant is that the accused is not keeping her and pronounced “Triple Talaq” to her hence he misused the provisions of bail.

In the given circumstances, the bare allegation of misuse of the bail conditions does not inspire any confidence of the court. The accused was physically present on previous dates and he is also ready to abide with the terms and condition of bail bonds. It is also pertinent to mention that once an accused is granted bail, the same cannot be cancelled save and except for compelling circumstances. The granting of bail empowers privilege/liberty to an accused person pending trial. The privilege is very sacrosanct and an accused would enjoy till he does not misuse this privilege or liberty. Thus considering the above facts and case laws the petition of the informant is hereby disposed of.”

It is further submitted that subsequently the



petitioner filed application on 15.9.2016 for confirmation of provisional bail but the same was rejected by the learned court below vide order dated 24.10.2016. It appears from order dated 16.2.2017 passed by the learned S.D.J.M., Patna as contained in Annexure 4 that an application was filed on behalf of the informant that the petitioner's application for confirmation of provisional bail dated 15.9.2016 has been rejected by the learned court below on 24.10.2016 but in spite of that he has not surrendered, hence, non-bailable warrant of arrest be issued as the period of provisional bail has already lapsed. Hence, the learned S.D.J.M. vide order dated 16.2.2017 directed for issuance of bailable warrant without cancelling the bail bonds of the petitioner.

It is further submitted by learned senior counsel for the petitioner that one of the conditions incorporated in order dated 15.3.2016 passed in Cr. Misc. No. 4212 of 2016 was that the provisional anticipatory bail of the petitioner will be confirmed if the informant gets reluctant to reconcile the issue. Hence, on 30.3.2016 informant's not being ready to accompany the petitioner, filing frivolous petition that the petitioner pronounced Triple Talaq on 30.4.2016, which was being denied by the petitioner coupled with the petitioner's stand that he is still ready



to keep the informant as wife amply suggest that informant was reluctant to resume the conjugal life, hence the learned court below ought to have confirmed the provisional anticipatory bail of the petitioner. More over, the petitioner has admittedly not misused the privilege of bail which has been recorded by the learned court below in its order dated 28.7.2016 as contained in Annexure 3 as quoted above. The order dated 16.2.2017 issuing bailable warrant of arrest against the petitioner is inconsistent to the earlier order of the learned court below dated 28.7.2016 as quoted above. Hence, mechanically the bailable warrant of arrest was directed to be issued without cancelling the bail bonds. Though the petitioner has challenged the order dated 16.2.2017 in a separate proceeding being Cr. Misc. No. 52961 of 2016, however, the petitioner is still ready to keep the informant as wife with dignity and honour.

Learned counsel for the informant submits that the petitioner pronounced Talaq, as a result, the issue could not be reconciled. However, he does not controvert the contention of learned senior counsel for the petitioner that the petitioner declines to admit the factum of Talaq and is still ready to resume the conjugal life. He further submits that learned court below has rightly directed for issuance of bailable warrant of arrest since the



period of provisional anticipatory bail got lapsed and petitioner's petition for confirmation of the provisional bail was rejected by the learned court below. However the informant is still ready to accept the offer of the petitioner of resuming conjugal life.

Considering the rival submissions of the parties, this court is of the view that from the facts brought on record, it, prima facie, appears that the informant was reluctant to reconcile the issue and the learned court below ought to have confirmed the provisional anticipatory bail of the petitioner under one of the conditions incorporated in order dated 15.3.2016 which specifically stipulates that the provisional bail will be confirmed if the informant gets reluctant to reconcile the issue but since the bailable warrant of arrest has been issued by the learned court below, this Court is not inclined to interfere. However, considering the fact that the petitioner has enjoyed the privilege of anticipatory bail for a petty long time, he has been consistent in his stand to keep the informant as wife even today and the informant is also still ready to accept the offer of the petitioner, the learned court below will pass appropriate order for release of the petitioner on provisional bail for four months if the petitioner surrenders within six weeks in connection with Gardanibagh PS Case No. 370 of 2015 pending in the court of the learned SDJM, Patna. It is



expected from the learned court below to take fresh initiative to get the issue reconciled. The provisional bail will be confirmed by the learned court below on the issue being reconciled. The provisional bail will also be confirmed by learned court below if the informant still gets reluctant to reconcile the issue.

With the aforesaid observation/direction, this application stands disposed of.

(Dinesh Kumar Singh, J)

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