

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.7332 of 2012

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1. Ram Kishun Jha @ Ram Krishna Jha, Son of Late Lakhan Jha, Resident of Village Jhakra, P.S. Sarairanjan, District Samastipur
 2. Lalita Devi @ Lala Devi, Wife of Ram Kishun Jha, Resident of Village Jhakra, P.S. Sarairanjan, District Samastipur
 3. Mamta Kumari @ Mamta Devi, Wife of Amarendra Kumar Jha, Resident of Village Jhakra, P.S. Sarairanjan, District Samastipur
 4. Amrendra Jha @ Amrendra Kumar Jha, Son of Ram Kishun Jha, Resident of Village Jhakra, P.S. Sarairanjan, District Samastipur
 5. Photo Devi @ Bandana @ Bandana Kumari, Wife of Mahesh Jha, Resident of Village Udabathua, P.S. Musrigharari, District Samastipur
 6. Mahesh Jha, Son of Late Ram Udit Jha, Resident of Village Udabathua, P.S. Musrigharari, District Samastipur

.... Petitioners

Versus

1. The State of Bihar
2. Indira Kumari, D/o Vishnudeo Mishra, Resident of Village Kishanpur, P.S. Ghatho, District- Samastipur

.... Opposite Parties

with

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Criminal Miscellaneous No. 7755 of 2012

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Abhay Kumar Jha, Son of Ram Kishun Jha @ Ram Krishna Jha, Resident of Village Jhakra, P.S. Sarairanjan, District Samastipur.

.... Petitioner

Versus

1. The State of Bihar
2. Indira Kumari, D/o Vishnudeo Mishra, Resident of Village Kishanpur, P.S. Ghatho, District Samastipur.

.... Opposite Parties

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Appearance :

(In Cr.Misc. No.7332 of 2012)

For the Petitioners : Mr. Ajay Kumar Thakur, Advocate
Mr. Malay Kumar Choudhary, Advocate

For the State : Mr. J.K. Roy-I, APP

For O.P. No.2 : None

(In Cr.Misc. No.7755 of 2012)

For the Petitioner : Mr. Ajay Kumar Thakur, Advocate
Mr. Malay Kumar Choudhary, Advocate

For the State : Mr. Ashok Kumar Singh, APP

For O.P. No.2 : None

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 10-05-2017



Both petitions for quashing are being disposed of by a common order as the same have been filed against the impugned order dated 30.01.2012, passed in Cr. Misc. No.216 of 2010, by learned 2nd Additional District & Sessions Judge, Samastipur whereby he has cancelled the anticipatory bail of the petitioners of both petitions, who are accused in Dalsingsarai P.S. Case No.138 of 2010 registered under Section 498A IPC.

2. A brief fact giving rise to the case is that Ram Kishun Jha, Lalita Devi, father-in-law and mother-in-law of the informant, Mamta Kumari @ Mamta Devi, Wife of petitioner no.4 Amarendra Kumar Jha and brother of the informant's husband, Son of Ram Kishun Jha, Photo Devi @ Bandana @ Bandana Kumari, married Nanad and Wife of Mahesh Jha, Mahesh Jha, Son of Late Ram Udit Jha and Abhay Kumar Jha, husband of the informant by order dated 27.09.2010, passed in ABP No.863 of 2011 and ABP No.951 of 2010 was granted pre arrest bail on depositing some money in the name of wife as well as considering undertaking that the husband was ready to take back his wife and to keep her with dignity and honour. Later on the informant of the case filed a petition before the Sessions Court, Samastipur vide Cr. Misc. No.216 of 2010 for cancelling the anticipatory bail granted to all accused on the ground that after getting the bail, they are not taking her back so Cr. Misc. No.216 of 2010 was



disposed of by the impugned order dated 31.01.2012 of these quashing petitions and anticipatory bail granted to all accused was cancelled as the petitioners violated the terms and directions of the court and refused to take the informant back to her matrimonial home.

3. The learned counsel appearing on behalf of the petitioners in both the cases submits that the ground for cancellation in the present case is that the petitioners refused to take the informant back, which cannot be a ground for cancellation of bail. It is also submitted that as per the direction of the court, amount was deposited in the name of the wife and the husband is always ready to take her back but she refused to go back to matrimonial home and further submits that the ground for cancellation of bail is alien to the provision of law i.e. under Section 438 Cr.P.C. There is no allegation of tampering of evidence or threatening of witnesses or it is not the case that the accused persons after grant of bail are misusing the privilege of bail.

4. The learned Additional Public Prosecutor appearing on behalf of the State submits that the anticipatory bail was granted to the accused persons, who are petitioners herein, considering the unertaking made by the petitioners that they are ready to take back the informant but after grant of bail, they refused to take her back.

5. Having considered the rival submissions, I find that



the accused persons were granted pre arrest bail on the ground that the husband was to deposit Rs.1,77,000/- and the husband would take back his wife and shall keep her with dignity and honour. However, it appears from the impugned order that the husband Abhay Kumar Jha later on refused to take her back after grant of anticipatory bail so she was compelled to file a petition in the court below for cancellation of bail granted to her husband and other in-laws and the sessions court cancelled the bail considering the ground that the petitioners have violated the terms and conditions mentioned in the bail order. I find that the petitioners of Cr. Misc. No.7332 of 2012 are, father-in-law, mother-in-law, brother-in-law, wife of brother-in-law, married Nanad and her husband and they had filed ABP No.863 of 2010 before the Sessions Court whereas petitioner of Cr. Misc. No.7755 of 2012 is the husband of the informant and he was petitioner of ABP No.951 of 2010. Both ABP Nos.863 of 2010 and 951 of 2010 were disposed of by a common order dated 27.09.2010 on the ground that the husband shall deposite the fixed amount in the name of his wife as well as ready to take back his wife to keep her with dignity and honour. The responsibility of keeping the wife squarely lies on the husband and the said undertaking was filed by the husband and not by other petitioners. So cancellation of anticipatory bail to petitioners Ram Kishun Jha @ Ram Krishna Jha, Lalita Devi @ Lala Devi, Mamta



Kumari @ Mamta Devi, Amrendra Jha @ Amrendra Kumar Jha, Photo Devi @ Bandana @ Bandana Kumari and Mahesh Jha is not justified as there is no ground for cancellation of their bail. So far as petitioner Abhay Kumar Jha husband of the informant is concerned, has violated the terms fixed by the court while granting him privilege of pre arrest bail as he failed to take back his wife. Section 438(2) Cr.P.C. reads as such:

*"438. Direction for grant of bail to person apprehending arrest.—(1)
 (2) When the High Court or the Court of Session makes a direction under sub-section (1), it may include such conditions in such directions in the light of the facts of the particular case, as it may think fit, including—
 (i) a condition that the person shall make himself available for interrogation by a police officer as and when required;
 (ii) a condition that the person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;
 (iii) a condition that the person shall not leave India without the previous permission of the Court;
 (iv) such other condition as may be imposed under sub-section (3) of section 437, as if the bail were granted under that section."*

6. The said Section clearly shows that besides the four specific conditions, which may be imposed by the court, the discretion is also granted to the court to impose appropriate conditions as the court thinks fit while granting anticipatory bail considering the facts of the particular case. In the present case the court below had granted anticipatory bail to the husband considering the changed circumstance



and in particular an undertaking filed by him to take back his wife and to keep her with dignity and honour, considering the chance of restitution of conjugal relationship as well as the interest of the informant and the husband but after grant of the same, the husband has not taken his wife back so one of the conditions on which he was admitted to pre arrest bail was not fulfilled by him, therefore, anticipatory bail granted to him is liable to cancelled, so I do not find any illegality in the order of cancellation of bail in respect of the husband of the informant.

7. In the result, Cr. Misc. No.7332 of 2012 is allowed and Cr. Misc. No.7755 of 2012 is dismissed.

(Arun Kumar, J.)

S.Kumar/-

AFR/NAFR	AFR
CAV DATE	NA
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