

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.45470 of 2016

Arising Out of Complaint Case No. 47 of 2015 pending in the court of ACJM-7 Kaimur at Bhabhua

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Deepak Kumar Singh son of Late Dharmdeo Singh, resident of village-
Janardanpur, P.S.-Dugawaati, District- Kaimur at Bhabua

.... Petitioner/s

Versus

1.State of Bihar

2. Nitu Devi wife of Deepak Kumar Singh, daughter of Brij Bihari Singh, resident
of village- Janardanpur, P.S.-Dugawaati, District- Kaimur at Bhabua, at present
residing at village- Dihra, P.S.-Shivsagar, District- Rohtas at Sasaram

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Tribhuwan Narayan, Advocate

For the Opposite Party No.2 : Mr. Rajeev Kumar, Advocate

For the State : Mr. Dinesh Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 31-08-2017

The petitioner has been made accused in a case under
Section 498A of the Indian Penal Code and Sections 3 and 4 of the
Dowry Prohibition Act. He had filed an application for grant of pre-
arrest bail before the Court of Session Judge, Kaimur at Bhabua, vide
ABP No.63 of 2016. In the said ABP No.63 of 2016, the petitioner
gave an undertaking that he would keep his wife with dignity and
honour and, on the basis of such undertaking, his application for grant
of pre-arrest bail was allowed, vide order dated 23.01.2016. After
grant of pre-arrest bail, the petitioner has not complied with the
undertaking given before the court and has deserted his wife. Thus,
the complainant filed an application under Section 439(2) of the Code



of Criminal Procedure (for short 'the CrPC') in the Court of Session Judge for cancellation of bail granted to him. After hearing the parties, the learned Session Judge, vide order dated 18.08.2016 allowed the prayer of the complainant and cancelled the bail granted to the petitioner earlier. The operative part of the order passed by the learned Session Judge reads as under:

“I find that it is a fact that even after repeated adjournments the husband/O.P. No. 2 is not appearing before the court during pendency of this criminal Miscellaneous petition though, the notice was received by him and he has also engaged learned counsel on his behalf by filing power to appear in the case but even concerned lawyer did not appear today neither the husband. Wife is present and according to her after grant of bail her husband never turned up to take her back. I find that Deepak Kr. Singh one of the accused of Complaint Case No. 47 of 2015 was granted anticipatory bail considering their intention to take his wife back to matrimonial home in view of undertaking filed by him. Rest other accused were granted anticipatory bail as allegations against them are general and omnibus so there is distinction in the case of the husband and rest other accused. Deepak Kr. Singh/ O.P. No.2, the husband of the petitioner has not followed the undertaking filed



by him on the basis of which he was granted anticipatory bail and his defiant attitude not to appear before this court personally despite directions and grant of several adjournments shows his intention not to take back his wife so, anticipatory bail granted to him by order dated 23.01.2016 in A B P No.63 of 2016 is only hereby cancelled.”

2. Learned counsel for the petitioner has submitted that the learned Session Judge has cancelled the bail of the petitioner on erroneous ground. He has submitted that it is not a fact that the petitioner has deserted his wife. He has contended that the fact of the matter is that the complainant herself is not ready to live in matrimonial house.

3. On the other hand, learned counsel for complainant-opposite party no.2 has submitted that a completely false statement has been made by the petitioner before this Court. He has submitted that after obtaining the order of pre-arrest bail, the petitioner neither approached her nor ever tried to take her back to the matrimonial house. He has contended that the petitioner's defiant approach has also been noted by the court below while passing the impugned order dated 18.08.2016.

4. I have heard learned counsel for the parties and perused



the record.

5. I find substance in the submissions of learned counsel for the informant.

6. Admittedly, the prayer for grant of pre-arrest bail was allowed by the court below on the undertaking of the petitioner that he would keep his wife in the matrimonial home with dignity and honour. After obtaining the order of bail, he failed to comply with the undertaking given before the court.

7. In that view of the matter, no error can be found in the order passed by the learned Session Judge. Accordingly, the application being meritless, is dismissed.

8. The petitioner may surrender and seek bail, which shall be considered on its own merits without being prejudiced in any manner either by the order passed by this Court or the order passed by the learned Session Judge whereby the application filed by the complainant under Section 439(2) of the CrPC has been allowed.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
CAV DATE	N/A
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