

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.38367 of 2013

Arising Out of PS.Case No. -136 Year- 2011 Thana -KASIMBAZAR District- MUNGER

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1. Ravi Kumar S/O Late Braj Kishore Mandal Resident Of Village- Neerpur, P.S- Bariarpur, District- Munger.
 2. Manorama Devi Widow Of Late Braj Kishore Mandal Resident Of Village- Neerpur, P.S- Bariarpur, District- Munger.
 3. Subham Kumar S/O Late Braj Kishore Mandal Resident Of Village- Neerpur, P.S- Bariarpur, District- Munger.
 4. Sanjay Kumar S/O Late Braj Kishore Mandal Resident Of Village- Neerpur, P.S- Bariarpur, District- Munger.
 5. Kumar Gautam S/O Late Braj Kishore Mandal Resident Of Village- Neerpur, P.S- Bariarpur, District- Munger.

.... Petitioners

Versus

1. The State Of Bihar
2. Renu Kumari @ Julie D/O Binod Kumar Mandal Resident Of Chhoti Mirjapur, P.S- Kazim Bazar.

.... Opposite Parties

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Appearance :

For the Petitioners : Mr. Dharendra Nath Jha, Advocate
For the State : Mr. Shailendra Kumar-2, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 29-06-2017

This petition is filed for quashing order dated 15.3.2013 passed by learned Sessions Judge, Munger whereby regular bail granted to petitioners Ravi Kumar, Subham Kumar, Kumar Gautam as well as anticipatory bail granted to Sanjay Kumar and Manorama Devi was cancelled.

2. A brief fact of this case is that petitioners are accused in Kashim Bazar P.S. Case No.136 of 2011 registered under Section 498A of the Indian Penal Code as well as 3/4 of Dowry Prohibition



Act. The accused persons moved regular bail application no.504 of 2011 and anticipatory bail application no.741 of 2011 in the court of Sessions Judge, Munger by common order dated 23.9.2011 granting regular bail and anticipatory bail to respective accused applicants. The bail was granted on the basis of compromise one of the conditions in the compromise petition was that the husband and wife both would file a petition under Section 13(b) of the Hindu Marriage Act in the court of Principal Judge, Family Court for divorce on the basis of mutual consent and as permanent alimony Rs.4,50,000/- will be paid by the husband to wife within six months in installments and accordingly the matrimonial suit will be disposed of, so considering the compromise petition bail was granted. Later on, a petition was filed by Renu Kumari complainant/wife seeking cancellation of bail granted to accused persons on the ground that terms of compromise are not being fulfilled by accused persons so by impugned order dated 15.3.2013 passed in Cr. Misc. No.2 of 2013 the bail granted to the petitioners was cancelled considering disobedience of the direction of the Court.

3. Learned counsel for the petitioners submits that Kumar Gautam the husband of the complainant after grant of bail got terminated from his service as he had gone under custody due to the criminal case lodged by his wife so he could not sign the petition filed



for divorce under Section 13(b) of the Hindu Marriage Act. Second contention is that permanent alimony can be fixed by a court of competent jurisdiction and not by a criminal court. It is also submitted that the wife filed a Divorce Suit No.157 of 2012 and the Family Court, Munger by order dated 31.10.2012 and both sides husband and wife agree to certain terms and conditions and one of the conditions was that husband will pay Rs.1,00,000/- to his wife towards full and final settlement regarding permanent alimony in a joint proceeding for divorce so filed under Section 13(b) of the Hindu Marriage Act by both sides. The said amount will be paid in two installments and the wife will withdraw the criminal cases lodged against the husband and the Divorce Suit No.157 of 2012 was dismissed as withdrawn but now the wife has turned back and not ready to take Rs.1,00,000/- as permanent alimony.

4. Learned Additional Public Prosecutor submits that the petitioners disobeyed the ground on the basis of which bail was granted to them so there is no error in the impugned order.

5. Having considered rival submission and on perusal of record, I find that permanent alimony and maintenance is passed under Section 25 of the Hindu Marriage Act, 1955 after taking into account the status of opposite party in fixing the amount for maintenance. Without adducing evidence with regard to the economic



status of the concerned party, it is not proper to fix the amount of permanent alimony or maintenance.

6. In the present case, a matrimonial suit no.157 of 2012 was filed by Renu Kumari against her husband Kumar Gautam and the same was dismissed as withdrawn after reconciliation and agreement between both sides regarding filing of a divorce suit on mutual consent under Section 13(b) of the Hindu Marriage Act and during the pendency of the proceeding the husband was to pay Rs.1,00,000/- to his wife as permanent alimony in two installments. A criminal court cannot settle the issue of permanent alimony as the same is beyond its jurisdiction. Permanent alimony to a hindu wife is granted under Section 25 of the Hindu Marriage Act, 1955 and it is mandatory for the Court to grant full opportunity to the parties to substantiate their rival contentions by leading proper evidence. The Court considers evidence regarding income and conduct of the parties as well as other circumstances and thereafter the final amount of permanent alimony is fixed; so fixing an amount of permanent alimony in criminal proceeding while granting bail is not proper. The order for release on bail may be cancelled under Section 437(5) or Section 439(2) of Cr.P.C. generally the grounds for cancellation of bail are interference or attempt to interference with due course of administration of justice or evasion or attempt to evade the course of



justice or abuse of the liberty granted to the accused; consideration of an application for grant of bail stands on a different footing than one for cancellation of bail.

7. In the present case, the bail granted to the petitioners was cancelled on the ground that permanent alimony amount fixed by way of compromise at the time of hearing of bail was not fulfilled but it cannot be a ground for cancellation of bail. There is no allegation against the petitioners that they have misused the liberty or made an attempt to tamper with the evidence or threatened witnesses, therefore, the impugned order is not sustainable.

8. Accordingly, it is set aside and the petitioners shall continue to remain on bail as earlier granted by the Sessions Court. This petition stands allowed.

(Arun Kumar, J)

N.H./-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	14-07-2017
Transmission Date	14-07-2017

