

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.24980 of 2018

Arising Out of PS.Case No. -8 Year- 2017 Thana -MAHILA PS District- GOPALGANJ

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1. Mainuddin Shah @ Mainuddin Ahmad Shah son of Late Shah Mohammad
 2. Ozaida Khatoon wife of Mainuddin Shah alias Mainuddin Ahmad Shah
 3. Nazara Khatoon wife of Geyasuddin All residents of village - Bairam, Indrawan, Police Station - Gopalganj Town, District - Gopalganj.

.... Petitioners

Versus

1. The State of Bihar.
2. Sabana Praveen daughter of Md. Ayub Anjum Resident of village - Balahan, Police Station Barauli, District - Gopalganj.

.... Opposite Party

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Appearance :

For the Petitioner/s : Mr. Sanjay Kumar, Advocate
Mr. Lokesh Kumar Singh, Advocate
For the Opposite Party/s : Mr. Jharkhandi Upadhyay, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2. 11-10-2018

Heard learned counsel for the petitioners and Mr. Jharkhandi Upadhyay, learned Additional Public Prosecutor representing the State.

Learned counsel for the petitioners has drawn attention of this court towards the last paragraph of the order dated 09.05.2017 passed in A.B.P. No. 310 of 2017 by which while granting the anticipatory bail to these petitioners who happened to be the father-in-law, mother-in-law and Gotni of the informant, directed them to make payment of Rs. 10,000/- per month as litigation cost to the



informant on 9th of each following months till settlement of the dispute and in case of default on three consecutive months on their part in making such payment without any reason privilege of anticipatory bail shall be withdrawn and they would be disentitled for the relief.

Learned counsel submits that this is a peculiar situation where while granting anticipatory bail the court exercising its jurisdiction under Section 438 Cr.P.C. indulges in taking upon itself the jurisdiction of the family court to grant ad-interim maintenance and has made a condition precedent for allowing the privilege of anticipatory bail or regular bail to an accused who is a family member of the husband and is facing prosecution because of matrimonial discord which has arisen between the husband and his wife.

It is submitted that in the present case the fact situation is that the husband of the informant is having his own source of income and taking into consideration his source of income, in Maintenance Case No. 173/2017 the learned Principal Judge, Family Court, Gopajganj has vide order dated



09.03.2018 fixed a sum of Rs. 3000/- for two minor children (Rs. 1500/- each) and further Rs. 3000/- for the wife.

By virtue of the said maintenance order dated 09.03.2018, the wife is now getting Rs. 6000/- from her husband. In these conditions, when an application for modification of the conditions imposed in the anticipatory bail order was filed before the learned 5th Additional Sessions Judge, Gopalganj, the same has been rejected by saying that litigation cost and maintenance allowance both are different in nature and the litigation cost will continue till final settlement of the matrimonial dispute.

Learned counsel submits that apparently the rejection of the application seeking modification of the order passed in the anticipatory bail matter, by the learned 5th Additional Sessions Judge, Gopalganj vide his order dated 28.03.2018 is wholly illegal, arbitrary and bad in law.

Learned counsel submits that by no stretch of imagination the operative part of the order dated 09.05.2017 passed in A.B.P. No. 310/2017 and then the subsequent order dated 28.03.2018 refusing to



modify the earlier order can be allowed to sustain.

Mr. Jharkhandi Upadhyay, learned Additional Public Prosecutor representing the State has also come upon heavily against the order impugned in the present application. He has taken a stand and in the opinion of this court rightly so that such conditions could not have been imposed by the court considering an anticipatory bail application that too where the in-laws had moved the court for bail.

Considering the facts and circumstances of the case, this court is of the considered opinion that the modification application preferred by the petitioners could not have been rejected on the ground that litigation cost and maintenance allowance are two different things, and therefore the litigation cost should be continuously paid to the informant till final settlement of the matrimonial dispute.

The order dated 28.03.2018 passed in A.B.P. No. 310/2017 is, therefore set aside, and the matter is remanded back to the court of learned 5th Additional Sessions Judge, Gopalganj to take a fresh



view of the matter keeping in mind the judicial pronouncement and the jurisdictional issues and decide the same after hearing all concerned in accordance with law.

Till further time and until decision on the modification application preferred by the petitioners which is now deemed to be pending by virtue of setting aside of the order dated 28.03.2018, the petitioner shall not be compelled to pay the amount of Rs. 10,000/- as litigation cost continuously.

This application stands disposed off, accordingly.

(Rajeev Ranjan Prasad, J)

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