

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.38278 of 2011

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KUM KUM KUMARI @ SONI, WIFE OF AMRENDRA PRASAD SINGH@ BIPIN KUMAR AND DAUGHTER OF ANIRUDH PRASAD SINGH R/O,EAST BAHADURPUR, NEW KUNJ COLONEY,P.S.-BAJAR SAMITI BAHADURPUR,DIST.-PATNA AT PRESENT RADHA PRASAD ,DAMODAR NIWAS,LONGER TOLI,P.S.-KADAMKUAN,DIST.-PATNA

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR
2. AMRENDRA PRASAD SINGH@ BIPIN KUMAR, SON OF RAM CHANDRA PD.SINGH NEW KUNJ COLONEY, EAST BAHADURPUR,P.S.-BAZAR SAMITI,DIST.-PATNA PRESENTLY POSTED AS ASSISTANT LOCO PILOT,CHIEF CREW CONTROLLER,BHUSAWA,DIST.-JALAON,MAHARASTRA

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Binoy Kumar
For the Opposite Party/s : Mr. S.Ehteshamuddin(App)

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

10 01-10-2020 Heard learned counsels for the petitioner and the
Opposite Party No. 2.

The present application has been filed for setting aside the order dated 11.04.2011 passed in Cr. Misc. No. 9341 of 2011 whereby the O.P. No. 2 was granted provisional anticipatory bail for a period of six months.

The factual matrix of the case is that the O.P. No. 2 being the husband of the petitioner, apprehended arrest in a complaint case wherein process was directed to be issued after cognizance being taken for the offences punishable under Sections 323, 406 and 498A of the IPC and Section 4 of the Dowry



Prohibition Act and as such, he preferred Cr. Misc. No. 9341 of 2011 with a prayer for anticipatory bail.

During hearing of the said Cr. Misc. application, a joint prayer was made that both the petitioner and the O.P. No. 2 were ready to resume the conjugal life. On the basis of that, O.P. No. 2 was granted provisional anticipatory bail for six months. The O.P. No. 2 and the petitioner were supposed to appear before the learned Court below on 02.05.2011, when the O.P. No. 2 was supposed to take the petitioner to her matrimonial house to keep the petitioner as wife with full dignity and honour. The provisional anticipatory bail of O.P. No. 2 was to be confirmed by the learned Court below if the matrimonial harmony is substantially restored or if the petitioner refuses to reside with the O.P. No. 2, but the provisional anticipatory bail of O.P. No. 2 was not to be confirmed if the petitioner brings substantial evidence before the learned Court below that she has been assaulted by O.P. No. 2, after the order of this Court.

The learned SDJM, Patna vide order dated 3.12.2011 passed in Complaint Case No. 182C of 2010 confirmed the provisional anticipatory bail of the O.P. No. 2 since the complainant-petitioner declined to reside with O.P. No. 2, as she was found to be mentally abraded. On the contrary, the O.P. No. 2



was ready to keep the petitioner as wife with full dignity and honour.

Learned counsel for the petitioner submits that for a short while, the O.P. No. 2 took the petitioner to her matrimonial house, but subsequently, he started inflicting torture, hence the issue could not be reconciled. This suggests that mechanically the order of confirmation of the provisional bail was passed by the learned Court below.

Learned counsel for the O.P. No.2 submits that the O.P. No. 2 performed his part of duty and thereby obeyed the terms and conditions incorporated in the order of this Court granting provisional anticipatory bail, which gets reflected from the order of learned Court below whereby the provisional bail of the O.P. No. 2 was confirmed. The issue could not be reconciled since the petitioner was not ready to resume the conjugal life.

From the rival submissions of learned counsels for the parties, it appears that the petitioner has preferred the present application for setting aside the order dated 11.4.2011 passed in Cr. Misc. No. 9341 of 2011 whereby the O.P. No. 2 was granted provisional anticipatory bail for a period of six months but that provisional bail was confirmed by the learned SDJM vide order dated 3.12.2011 and the same has not been challenged. Hence, on



this score alone, the present application is not maintainable.

It is trite law that the parameters for grant of bail and its cancellation are quite different. The bail is granted basically after considering the nature of accusation and conduct of the accused but when it comes to cancellation of bail, then the primary aspect, which is to be considered is, whether the accused has, after grant of bail, misused the privilege of the same by repeating the offence or tampering with the evidence. In the case of Aslam Babalal Desai Vs. State of Maharashtra, reported in (1992) 4 SCC 272, the parameters have been laid down for cancellation of bail. Part of paragraph 11 of the judgment reads as follows:

“.... As stated in Raghubir Singh case the grounds for cancellation under Sections 437(5) and 439(2) are identical, namely, bail granted under Section 437(1) or (2) or Section 439(1) can be cancelled where (i) the accused misuses his liberty by indulging in similar criminal activity, (ii) interferes with the course of investigation (iii) attempts to tamper with evidence or witnesses, (iv) threatens witnesses or indulges in similar activities which would hamper smooth investigation, (v) there is likelihood of his fleeing to another country, (vi) attempts to make himself scarce by going underground or becoming unavailable to the investigating agency, (vii) attempts to place



himself beyond the reach of his surety, etc. These grounds are illustrative and not exhaustive. It must also be remembered that rejection of bail stands on one footing but cancellation of bail is a harsh order because it interferes with the liberty of the individual and hence it must not be lightly resorted to.”

In the present application, nothing has been brought on record to suggest that O.P. No.2 has misused the privilege of bail. It appears that the O.P. No. 2 has enjoyed the privilege of anticipatory bail since 11.4.2011 and hence, this Court is not inclined to consider the cancellation of the same after more than nine years.

This application is accordingly dismissed.

(Dinesh Kumar Singh, J)

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