

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.41724 of 2018

Arising Out of PS.Case No. -423 Year- 2017 Thana -BODHGAYA District- GAYA

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Satyendra Yadav, Son of Ganpati Yadav, Resident of Village- Surujpura,
P.S.- Bodhgaya, District- Gaya.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Sunanda Kumari, W/o Satyendra Yadav, Resident of Village- Surujpura,
P.S.- Bodhgaya, District- Gaya.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Deepak Kumar

For the Opposite Party/s : Mr. Sri Anil Kumar Singh 1

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN
PRASAD
ORAL ORDER

2 09-10-2018

Heard learned counsel for the parties.

Since the opposite party no.2 has already appeared
no notice need be issued to her.

This application has been preferred for setting aside
the order dated 28.04.2018 passed by learned 9th Additional
District & Sessions Judge, Gaya in B.P. No.240 of 2017/2085 of
2017 by which he has refused to confirm the provisional bail of
the petitioner granted on 18.09.2017 on the ground that the
informant who is opposite party no.2 here before this Court made
a complaint that the petitioner is still misbehaving and torturing
her due to non-fulfillment of demand of dowry.

Learned counsel for the petitioner submits that it



will appear from perusal of the order dated 18.09.2017 that this petitioner was granted regular bail in BP No.240 of 2017 by learned 9th Additional District & Sessions Judge, Gaya. Prior to that he was in custody in connection with the case and had remained in custody since 19.08.2017. While granting bail to the petitioner, learned 9th Additional District & Sessions Judge, Gaya imposed a condition that the petitioner would file undertaking that he would keep his wife with full dignity. The provisional bail was granted to the petitioner till 03.10.2017 which was extended from time to time but ultimately it was cancelled by the impugned order. Learned counsel submits that despite his best efforts he is unable to persuade the opposite no.2 to live happily with him and this being the reason the opposite party no.2 is not being happy with the petitioner and making allegations of demand of dowry, whereas the petitioner is not indulged in such demands.

This submission of the learned counsel for the petitioner has been contested by learned counsel representing the opposite party no.2 who submits that once the provisional bail of the petitioner has not been confirmed, he has no option but to surrender and seek bail from the court below but in no case the impugned order should be set aside by this Court. Learned counsel also submits that the opposite party no.2 is ready and willing to



live with the petitioner.

In the given facts and circumstances of the case, this Court is of the opinion that the condition imposed by the learned 9th Additional District & Sessions Judge, Gaya for grant of regular bail is in the nature of a vague condition as in the admitted facts of the case where the parties are litigating because of matrimonial discord, on the saying of the opposite party no.2 alone the bail bond of the petitioner could not have been cancelled. In such cases where the bail is being granted by the court below, by imposing a condition that in case of complaint by the wife the bail bond of the petitioner has been cancelled leaves it open for one of the parties to keep the another party on the tenterhook.

In the present case, this Court finds that save and except the bald statement made in course of hearing, the opposite party no.2 had at no point of time made any written complaint to the concerned police station that the petitioner was torturing her or misbehaving with her. If no such complaint was made by the opposite party no.2 during period of her stay with the petitioner, in course of hearing of the bail application the bald statement made by her could not have led to cancellation of the bail bond of the petitioner. The order dated 28.04.2018 passed by learned 9th Additional District & Sessions Judge, Gaya in B.P. No.240 of



2017/2085 of 2017 therefore cannot sustain the test of reasonableness and is liable to be set aside.

Let the case of the petitioner for confirmation of bail be considered by the court below on the parameters indicated in the judicial pronouncements of this Court as well as the Hon'ble Supreme Court. The bail bond shall not be cancelled only on mere say of the other side.

The application is allowed.

(Rajeev Ranjan Prasad, J)

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