

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.22381 of 2017

In
Criminal Miscellaneous No.8390 of 2017

Arising Out of PS. Case No.- Year- Thana- District- East Champaran

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Kunal Singh S/o Arvind Kumar Singh, Resident of C-87, Chandralok Colony,
Kapurthala, P.S. Aliganj, District Lucknow (Uttar Pradesh).

... .. Petitioner/s

Versus

1. The State of Bihar
2. Nalini Gautam, W/o Kunal Singh, D/o Mukul Singh, Resident of Village-
Sugar Mill Quarter, Madhuban Road, P.S.- Chakia, District- East Champaran
(Bihar).

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Ardhendumauli Kumar Prasad Mr. Mayank Shekhar Mr. Saket Tiwary
For the Opposite Party/s :		Mr. Anil Kumar Singh 1
For the Informant	:	Mr. Sanjeev Ranjan

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

5 12-09-2018

Heard learned counsels for the parties.

The present application has been filed for modification of the order dated 19.9.2016 passed in Cr. Misc. No. 10541 of 2016, to the extent of confirming the provisional anticipatory bail, whereby the petitioner, being the husband of the informant was granted provisional anticipatory bail for six months in a case registered for the offences punishable under Sections 498A and 307/34 of the IPC and Sections 3 and 4 of Dowry Prohibition Act.

I.A. No.1392 of 2017 has been filed for amendment of prayer to the extent that the order dated 6.4.2017 passed by learned ACJM-13, East Champaran at Motihari in Chakia P.S. Case No. 91



of 2015, as contained in Annexure 11 also be quashed whereby the non-bailable warrant has been issued against the petitioner since the period of provisional anticipatory bail has already elapsed.

The factual matrix of the case is that the prosecution case got initiated with the fardbeyan of Nalini Gautam dated 20.5.2015 recorded by the ASI A.K. Singh at 11 P.M. at Referral Hospital, Chakia to the effect that the informant was married with the petitioner Kunal Singh on 1.12.2014. After the marriage, on 3.12.2014, the informant went to the in-laws house, where she was kept properly for 7-8 days, but thereafter further dowry demand of money was made for the purpose of starting the business of land brokerage. On inability being shown in meeting the demand of such amount by her parents, torture was inflicted upon the informant. The torture subsequently kept on increasing and the petitioner, in an inebriated condition, used to assault the informant and jewellerys of the informant were also seized by the accused persons. On 21.1.2015 the parents of the informant came to the in-law's house and tried to pacify the issue but the issue could not be pacified and the accused persons continued to inflict torture upon the informant. Ultimately, on 10.5.2015, a Sanha diary entry was made at the behest of the informant whereafter, on arrival of the police, the accused persons undertook to keep the informant with



dignity and honour but subsequently again, they started inflicting torture upon the informant. The accused persons also attempted to kill the informant by administering poison to her but she somehow resisted the attempt, while injury was caused to the informant. Thereafter, the informant was taken to Referral Hospital where her fardbeyan was recorded, leading to registration of Chakia P.S. Case 91 of 2015 against the petitioner and in-laws' family members for the offences punishable under Sections 498A and 307/34 of the IPC and Sections 3 and 4 of Dowry Prohibition Act.

The petitioner being the husband of the informant-O.P. No. 2, preferred Cr. Misc. No. 10541 of 2016 with a prayer for anticipatory bail, wherein it was submitted by learned counsel for the petitioner that the petitioner is ready to withdraw the pending matrimonial suit against the informant-O.P. No. 2 and to keep the informant as wife with full dignity and honour, though statement to that effect was not made in the petition. The learned counsel for the informant, on instruction, submitted that the informant is ready to accept the offer of the petitioner and she undertook to withdraw the maintenance case against the petitioner. Both sides agreed to appear before the learned court below on 3rd October, 2016 when the petitioner was supposed to take the informant with him to keep her as wife with full dignity and honour. Considering the aforesaid



stand of the parties, the petitioner was directed to be released on provisional anticipatory bail for six months. The provisional anticipatory bail of the petitioner was to be confirmed in three eventualities - (i) if the matrimonial harmony is substantially restored, or (ii) if the informant fails to appear before the learned court below or (iii) if the informant gets reluctant to reconcile the issue.

Subsequently, Cr. Misc. No. 50437 of 2016 was preferred by the petitioner for modification of the order dated 19.9.2016 passed in Cr. Misc. No. 10541 of 2016 to the extent of confirming the provisional bail of the petitioner, wherein it was submitted that in pursuance to the order of this Court, the petitioner appeared and took the informant to the matrimonial house but the petitioner was assaulted by the informant side, pursuant to which the petitioner lodged Motihari Town P.S. Case No. 620 of 2016 with accusation under Sections 341,323,307,379 and 504/34 of the IPC. However, Section 307 was subsequently interpolated as Section 327. The informant also lodged a case as a counter blast being Motihari Town P.S. Case No. 621 of 2016 with accusation under Sections 341,323,354,379 and 504/34 of the IPC.

The said modification application was disposed of vide order dated 23.11.2016, as contained in Annexure 8 with a liberty



to the learned Court below to consider the prayer of confirmation of provisional bail keeping in view the subsequent development. However, in the order dated 23.11.2016, it was inadvertently recorded that the learned Court below will consider the prayer for confirmation of provisional bail of the petitioner if the petitioner surrenders before the Court below but the same was modified vide order dated 22.2.2017 passed in Cr. Misc. No. 8390 of 2017 since consideration was with regard to confirmation of provisional bail.

It appears that vide order dated 6.4.2017 passed by the learned ACJM-13, East Champaran, Motihari in Chakia P.S. Case No. 91 of 2015 the petitioner's application for confirmation of provisional bail has been rejected and non-bailable warrant of arrest has been directed to be issued since the period of provisional bail got elapsed. The said order dated 6.4.2017 passed by learned ACJM-13, East Champaran at Motihari in Chakia P.S. Case No. 91 of 2015, as contained in Annexure 11 has been prayed to be quashed through I.A. No. 1392 of 2017, as referred to above.

It is submitted by learned counsel for the petitioner that bonafide of the petitioner is apparent from the fact that the petitioner tried to get the issue reconciled with the informant, but it was the informant's side who made an attempt on the life of the petitioner and they also tried to make interpolation in the FIR



lodged by the petitioner, being Motihari Town P.S. Case No. 620 of 2016. It is further submitted that the learned Court below failed to consider the application for confirmation of provisional bail of the petitioner in true purport of the order of this Court dated 23.11.2016 passed in Cr. Misc. No. 50437 of 2016, whereby this Court directed the learned Court below to consider the prayer of confirmation of provisional bail keeping in view the subsequent development in as much as the case and counter case were lodged and said subsequent development of taking attempt on the life of the petitioner, suggesting that the informant was reluctant to reconcile the issue and that was one of the grounds for seeking confirmation of the provisional bail of the petitioner. Hence, the present application for confirmation of the provisional bail. Further prayer has been made through I.A. No. 1392 of 2017 for setting aside the order dated 6.4.2017 passed by learned ACJM-13, East Champaran at Motihari in Chakia P.S. Case No. 91 of 2015, as contained in Annexure 11, whereby the non-bailable warrant has been issued against the petitioner.

Mr. Sanjeev Ranjan, learned counsel for the informant submits that in fact the aggressor was the petitioner, however, the case lodged by the informant side being Motihari Town P.S. Case No. 621 of 2016 was subsequent to the case lodged by the



petitioner against the informant side. It is further submitted that the petitioner failed to take any sincere effort to reconcile the issue. The bonafide of the petitioner gets clouded from the fact that the learned Principal Judge, Family Court, Saran, in Maintenance Case No. 35 of 2016, directed the petitioner to pay Rs.4000/- per month as interim maintenance to the O.P. No. 2 from the date of order, i.e., 23.4.2018 but the same has not been paid till date. Mr. Ranjan further submits that in view of the serious litigated relationship between the parties, the chance of reconciliation of the issue appears to be bleak, however, he prays for conclusion of the trial pending before the learned Court below within a time frame and in the meantime, the petitioner may be directed to make payment of maintenance amount including the arrears to the informant-O.P. No.2.

Learned counsel for the petitioner submits that the petitioner is ready to make payment of maintenance amount including the arrears as per the order passed in Maintenance Case No. 35 of 2016 by the learned Principal Judge, Family Court within a period of two weeks from today.

Considering the rival submissions of the parties, keeping in view the fact that in spite of serious indulgence given by this Court, the chances of issue being reconciled, at present, does not



appear to be very bright and also in view of the present stand of the parties, in the interest of justice and in order to save the O.P. No. 2 from destitution and vagrancy with a lurking hope that the issue may reconcile in future, the order dated 6.4.2017 passed by learned ACJM-13, East Champaran at Motihari in Chakia P.S. Case No. 91 of 2015, as contained in Annexure 11 is hereby quashed to the extent of issuance of non-bailable warrant of arrest against the petitioner and I.A. No. 1392 of 2017 is disposed of.

The provisional anticipatory bail granted to the petitioner vide order dated 19.9.2016 passed in Cr. Misc. No. 10541 of 2016 is hereby confirmed with a condition that the learned Court below will take a fresh bail bond from the petitioner and an affidavit to the effect that the petitioner has made up-to-date payment of maintenance amount, as directed by the learned Principal Judge, Family Court, Saran in Maintenance Case No. 35 of 2016. The learned Court below is also expected to conclude the trial preferably within a period of nine months. If the petitioner either defaults on three consecutive occasions before the learned trial court during trial without there being any reasonable cause shown or defaults in payment of maintenance amount within a period of six weeks from today, the learned Court below will be at liberty to cancel the bail bonds of the petitioner.



Accordingly, this modification application is disposed
of.

(Dinesh Kumar Singh, J)

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