

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.44135 of 2017

In
Criminal Miscellaneous No.3154 of 2017

Arising Out of PS. Case No.- Year- Thana- District- Vaishali

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Jyoti Raj D/o Sri Umesh Prasad Sah, W/o Bharti, R/o Indu Sadan, Lohsari
Road, Village- Singhray Mahua, P.S.- District- Vaishali.

... .. Petitioner/s

Versus

1. State Of Bihar
2. Alok Bharti Son of Anup Lal Sah, R/o Village- Neemchak, P.S.- Tajpur,
District- Samastipur.

... .. Opposite Party/s

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with
Criminal Miscellaneous No. 56821 of 2017
In
Criminal Miscellaneous No.3154 of 2017

Arising Out of PS. Case No.- Year-1111 Thana- District- Vaishali

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Alok Bharti son of Anup Lal Sah resident of village - Neemchak, P.S. Tajpur,
District – Samastipur.

... .. Petitioner/s

Versus

1. State Of Bihar
2. Jyoti Raj daughter of Shri Umesh Prasad Sah resident of village - Mahua
Singhrail, P.S. Mahua, District – Samastipur.

... .. Opposite Party/s

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Appearance :

(In Criminal Miscellaneous No. 44135 of 2017)

For the Petitioner/s : Mr.Nikhil Kumar Agrawal

For the Opposite Party/s : Mr.Sri Ajit Kumar

(In Criminal Miscellaneous No. 56821 of 2017)

For the Petitioner/s : Mr.Pravin Kumar Sinha

For the Opposite Party/s : Mr.Sri Bharat Bhushan

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT

Date : 15-02-2019

Cr. Misc. No. 44135 of 2017



The above mentioned Cr. Misc. application has been preferred by Jyoti Raj for modification of the order dated 19.08.2017 passed in Cr. Misc. No. 3154 of 2017, whereby the provisional anticipatory bail granted to O.P. No.2, Alok Bharti, the husband of the petitioner vide order dated 30.09.2016 passed in Cr. Misc. No. 43264 of 2016 was further extended till 30th September, 2017, in connection with Mahua P.S. Case No. 294 of 2016 registered for the offences punishable under Sections 498A, 323, 341, 379, 504/34 of the Indian Penal Code and Sections 3/4 of Dowry Prohibition Act, with liberty to the learned Court below to confirm the provisional bail on filing affidavit to the effect that the monthly amount of Rs.10,000/- for the period September, 2017 has been paid and that O.P. No.2 will pay the said amount on regular basis. The sole ground for such modification was that the period of provisional bail was extended on the basis of consideration of wrong submissions made on behalf of O.P. No. 2 that the bail bond was not cancelled.

Cr. Misc. No. 56821 of 2017

The above mentioned Cr. Misc. application has been preferred by Alok Bharti for modification of order dated 19.08.2017 passed in Cr. Misc. No. 3154 of 2017 to the extent



of extending the period of provisional bail from 30.09.2017 till the final disposal of the application.

I.A. No. 267 of 2018

The above mentioned Interlocutory application has been preferred in the Cr. Misc. No.56821 of 2017 application for quashing the order dated 11.07.2017 passed by learned CJM, Vaishali at Hajipur in Mahua P.S. Case No. 294 of 2016, whereby the learned Court below observed that period of provisional bail has lapsed, hence, the bail bond has automatically been cancelled. However, learned counsel for the petitioner seeks permission to withdraw the Interlocutory application.

Accordingly, I.A. No. 267 of 2018 is dismissed as withdrawn.

I.A. No. 2927 of 2018

In the aforesaid Cr. Misc. application second Interlocutory Application No. 2927 of 2018 has been preferred for quashing the order dated 31.10.2017 passed by learned CJM, Vaishali at Hajipur in Mahua P.S. Case No. 294 of 2016, whereby the learned Court below recalled/cancelled the order dated 15.09.2017, whereby the petitioner's provisional bail was confirmed by the learned Court below in view of the order dated



19.08.2017 passed in Cr. Misc. No. 3154 of 2017, whereby the learned Court below was directed to confirm the provisional bail of the petitioner.

The factual matrix of the case is that Jyoti Raj's marriage was performed with Alok Bharti on 29.11.2012 and subsequently, they were blessed with a male child. But with accusation of inflicting torture for non-fulfillment of dowry demand, Mahua P.S. Case No. 294 of 2016 was registered with accusation under Sections 498A, 341, 323, 379, 504/34 of the Indian Penal Code and Sections 3/4 of Dowry Prohibition Act at behest of Jyoti Raj.

In the aforesaid Mahua P.S. Case No. 294 of 2016, Alok Bharti, husband of Jyoti Raj, preferred anticipatory bail application before this Court, being Cr. Misc. No. 43264 of 2016 with a prayer for anticipatory bail, wherein it was the specific stand of the petitioner that he is ready to keep the informant as wife with full dignity and honour and statement to that effect was made in para 21 of the main, which reads as follows:-

“That without any just cause and excuse the informant left the consortium of her husband. Despite of this attitude of informant the petitioner is



still ready to keep informant and his son with him
will all honour and dignity.....”

Considering the above mentioned stand of the husband, Alok Bharti, this Court granted provisional anticipatory bail for six months vide order dated 30.09.2016 with a liberty to learned Court below to issue notice to the informant for her appearance. On her appearance, the petitioner was to take the informant to keep her as wife with full dignity and honour. The provisional bail of the petitioner was to be confirmed by the learned Court below in three eventualities (I) if the matrimonial harmony is substantially restored (ii) if the informant fails to appear before the learned Court below or (iii) if the informant gets reluctant to reconcile the issue. Subsequent thereto, the husband Alok Bharti preferred Cr. Misc. No. 3154 of 2017 with a prayer for modification of the order dated 30.09.2016 passed in Cr. Misc. No. 43264 of 2016 to the extent of confirming the provisional bail taking the plea that the husband is ready for resumption of the conjugal life but the wife-informant is reluctant and is not ready for resumption of the conjugal life. However, that contention was refuted by the counsel appearing for the informant with specific submission that she is still ready to resume the conjugal life.



Considering the fact that both sides on one pretext or other is not ready to resume the conjugal life and on the submission made on behalf of the husband that he is ready to make payment of Rs.10,000/- per month from September, 2017 to the informant-wife by depositing the same in her bank account and the same being accepted, though, reluctantly by the informant, the provisional bail of the petitioner was directed to be confirmed by the learned Court below on deposit of the monthly amount for September, 2017 coupled with an affidavit to be filed by the husband that he is ready to make the payment on regular basis. The aforementioned payment was subject to any order being passed in matrimonial, maintenance or any other connected proceedings. In case of default in making payment for three consecutive occasions, liberty was given to the informant to file application for cancellation of bail of the petitioner. However, it was also observed that the present order, in no way, will preclude the parties to resolve the issue otherwise. The relevant portion of the order dated 19.08.2017 passed in Cr. Misc. No. 3154 of 2017 reads as follows:-

“Considering the rival submissions of the parties and the contentions raised from both the sides, it appears that both the petitioner and the informant,



are actually not inclined for reconciling the issue at present. However, in the alternative, learned Senior Counsel for the petitioner submits that the petitioner is ready to make payment of Rs.10,000/- per month from September, 2017 to the informant-opposite party no. 2 by depositing the same in her bank account by second week of every succeeding month.

Counsel for the informant-opposite party no. 2 submits that the informant is reluctantly ready to accept the offer and undertakes to submit her bank account number on affidavit before the learned Court below within a period of three weeks.

It is submitted by learned Senior Counsel for the petitioner that the bail bond of the petitioner has not been cancelled as yet.

Considering the present stand of the parties, which will, at least, for the present, save the informant and minor child from destitution and vagrancy, with a lurking hope that the issue may reconcile in future, the period of provisional anticipatory bail granted to the petitioner vide order dated



30.09.2016 passed in Cr. Misc. No. 43264 of 2016 is extended till 30th September, 2017.

The provisional bail will be confirmed by the learned Court below on deposit of monthly amount for September, 2017 and filing of an affidavit that the petitioner will deposit the amount regularly.

The aforementioned payment will be subject to any order passed in matrimonial, maintenance or any other connected proceedings.

Three consecutive defaults in making payment will give liberty to the informant-opposite party no. 2 to file application for cancellation of bail of the petitioner.

The present order, in no way, will preclude the parties to resolve the issue otherwise.”

Thereafter, Jyoti Raj preferred Cr. Misc. No. 44135 of 2017 for modification of order dated 19.08.2017 passed in Cr. Misc. No. 3154 of 2017 to the extent of cancelling the provisional bail on the ground that on behalf of husband-petitioner a wrong submission has been made that his bail bond was never cancelled. This Court vide order dated 13.09.2017 issued notice to the husband, Alok Bharti and directed that



operation of order dated 19.08.2017 passed in Cr. Misc. No. 3154 of 2017 to the extent of confirmation of the provisional anticipatory bail of the petitioner, if it has already not be confirmed, shall remain stayed. A petition to that effect was submitted before the learned Court below on 14.09.2017 intimating about the order dated 13.09.2017 that the order dated 19.08.2017 passed in Cr. Misc. No. 3154 of 2017 has been stayed, but instead of that the learned CJM vide order dated 15.09.2017 confirmed the provisional bail. However, subsequently vide order dated 31.10.2017 the learned Court below recalled/cancelled the order of bail confirmation dated 15.09.2017, whereby provisional bail was confirmed and the said order is under challenge through I.A. No. 2927 of 2018.

In the meantime, wife Jyoti Raj preferred Domestic Violence Case No. 95 of 2016 on 01.12.2016 which is pending before learned ACJM, Patna, wherein, husband, Alok Bharti has already entered appearance. In maintenance case preferred by Jyoti Raj being Maintenance Case No. 153 of 2016 under Section 125 of the Cr.P.C., learned Principal Judge, Family Court, Vaishali at Hajipur vide order dated 11.04.2018 while considering the monthly amount being paid by the husband to the tune of Rs.10,000/-, allowed the maintenance case on



contest and directed the husband-petitioner to make payment of Rs.5,000/- per month to the wife and Rs.5,000/- per month for maintenance and education of the minor son from the date of filing of maintenance case, i.e., 20.09.2016, subject to the condition that deductions will be made from the amount already paid in pursuance to the order passed by this Court. This is not in dispute that the husband is making payment of the aforesaid amount by virtue of the order of this Court or by virtue of the order passed by learned Principal Judge, Family Court, Vaishali at Hajipur in Maintenance Case No. 153 of 2016.

It is submitted by learned counsel for the petitioner Jyoti Raj in Cr. Misc. No. 44135 of 2017 that the petitioner's husband Alok Bharti has got the provisional bail confirmed subject to certain conditions, on the basis of wrong submission that the bail bond has not been cancelled. Moreover, she is still ready for resumption of conjugal life and due to the apathetic attitude of the husband, the issue could not be resolved in spite of the fact that the matter was referred to mediation center on the joint prayer of the parties. However, for facilitating the mediation vide order dated 20.04.2018 passed in Cr. Misc. No. 44135 of 2017 and Cr. Misc. No. 56821 of 2017, the interim



protection was granted to the husband Alok Bharti.

Learned counsel for the petitioner has no objection, if interim order is passed for appearance of opposite party no. 2.

The relevant portion of order dated 20.04.2018 reads as follows:-

“Let no coercive steps be taken against opposite party no. 2 Alok Bhartui to enable him to appear before this Court in connection with Mahua P.S. Case No. 294 of 2016 pending in the Court of learned Chief Judicial Magistrate, Vaishali at Hajipur.”

Hence, in view of the factual position as discussed above, it appears that the issue cannot be resolved at this stage by way of resumption of conjugal life. However, in view of the fact that the husband Alok Bharti was granted provisional bail vide order dated 30.9.2016 passed in Cr. Misc. No. 43264 of 2016 for six months which was further extended till 30th September, 2017 vide order dated 19.8.2017 passed in Cr. Misc. No. 3154 of 2017 and liberty was given to the learned Court below to confirm the provisional bail on deposit of the monthly amount of Rs.10,000/- for September, 2017 and filing of an affidavit that the petitioner will deposit the amount



regularly, as both sides agreed for settlement of issue on monthly payment of Rs.10,000/-, hence this Court feels not necessary to resolve the issue whether the learned court below ought to have confirmed the provisional bail when the confirmation was stayed by this Court vide order dated 13.9.2017 passed in Cr. Misc. No. 44135 of 2017. However, when the learned CJM came to know about the order of this Court dated 13.9.2017 passed in Cr. Misc. No. 44135 of 2017, whereby it was directed not to confirm the provisional bail if it has already not been confirmed on 14.9.2017, the learned court ought not to have confirmed the provisional bail vide order dated 15.9.2017 on the ground that the issue has attained finality and secondly if the provisional bail was confirmed then the learned Court below had no jurisdiction to recall or cancel that order.

Accordingly, this Court is not inclined to either consider the prayer made in Cr. Misc. No. 44135 of 2017 filed by the wife Jyoti Raj for modification of the order dated 19.8.2017 passed in Cr. Misc. No. 3154 of 2017 whereby the provisional bail of husband Alok Bharti granted vide order dated 30.9.2016 passed in Cr. Misc. No. 43264 of 2016 for a period of six months was extended till 30th September, 2017 as



the same has become infructuous and secondly this Court is also not inclined to consider I.A. No. 2927 of 2018 filed by the husband Alok Bharti, whereby prayer has been made to quash the order dated 31.10.2017 passed by the learned CJM, Vaishali recalling/cancelling the order dated 15.9.2017 whereby the provisional bail of Alok Bharti was confirmed, in pursuance to the order dated 19.8.2017 passed in Cr. Misc. No. 3154 of 2017.

Accordingly, I.A. No. 2927 of 2018 stands disposed of.

However, keeping in view the fact that both the parties earlier agreed to resolve the issue in terms of monthly payment of Rs.10000/- which gets reflected from the order dated 19.8.2017 passed in Cr. Misc. No. 3154 of 2017 as quoted above and the background of the controversy which arose after passing of the order dated 19.8.2017 passed in Cr. Misc. No. 3154 of 2017 whereby husband Alok Bharti's provisional bail granted vide order dated 30.9.2016 passed in Cr. Misc. No. 43264 of 2016 for six months was extended till 30th September, 2017, in the interest of justice and to resolve the issue, this Court modifies the order dated 30.9.2016 passed in Cr. Misc. No. 43264 of 2016 to the extent that let the



husband Alok Bharti be released on bail provisionally till 5th March, 2019. In the meantime, Alok Bharti will furnish bail bond of Rs.10,000/- (Ten thousand) with two sureties of the like amount each to the satisfaction of learned Chief Judicial Magistrate, Vaishali at Hajipur in connection with Mahua P.S. Case No. 294 of 2016, with an affidavit to the effect that he will regularly appear before the learned Courts below in Mahua P.S. Case No. 294 of 2016, as well as in Domestic Violence Case No. 95 of 2016, pending in the Court of learned ACJM, Patna.

It is expected from learned CJM, Vaishali at Hajipur and learned ACJM, Patna to conclude both the proceedings preferably within a period of six months of the receipt/production of a copy of this order.

Let a copy of this order be transmitted to both the learned courts below.

The learned CJM, Vaishali at Hajipur will confirm the provisional bail of Alok Bharti on filing of the aforesaid affidavit by the husband Alok Bharti to the extent that he will regularly appear in Mahua P.S. Case No. 294 of 2016, as well as in Domestic Violence Case No. 95 of 2016. However, the



learned CJM, Vaishali at Hajipur will cancel the bail bond of the petitioner, Alok Bharti if he defaults for three consecutive occasions either in Mahua P.S. Case No. 294 of 2016 or defaults for two consecutive occasions in making payment of the maintenance amount.

Accordingly, both the Cr. Misc. Applications are disposed of.

Keeping in view the fact that utmost generosity has been shown to the husband-petitioner by this Court, it is made clear that if the husband-petitioner commits breach any of the conditions, then this Court will not entertain any further application on his behalf.

(Dinesh Kumar Singh, J)

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CAV DATE	
Uploading Date	
Transmission Date	

