

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.42622 of 2017

Arising Out of PS.Case No. -80 Year- 2015 Thana -RUDRAPUR District- MADHUBANI

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Vandana Devi W/o Sudhir Kumar D/o Parmanand Jha , R/o Nav Nagar,
P.S.- Rudrapur, District- Madhubani.

.... Petitioner/s

Versus

1. The State of Bihar .
2. Sudhir Jha @ Sudhir Kumar Jha Son of Siya Ram Jha, R/o Village-
Jalsain, P.S.- Rudrapur, District- Madhubani.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Hansraj

For the Opposite Party/s : Mr. Sri Satyendra Prasad

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL ORDER

02/ 26-09-2018

Heard learned counsel for the petitioner and

learned APP for the State.

The present application has been filed for cancellation of provisional anticipatory bail of opposite party no. 2, Sudhir Jha @ Sudhir Kumar Jha, who being the husband of the informant-petitioner, was granted provisional anticipatory bail for one year vide order dated 28.03.2016 passed in Cr. Misc. No. 13188 of 2016 in connection with Rudrapur P.S. Case No. 80 of 2015, registered for the offences punishable under Sections 498A/379 of the Indian Penal Code and Sections 3/4 of Dowry Prohibition Act, pending in the Court of learned Sub-divisional Judicial Magistrate, Jhanjharpur, Madhubani.



On submission made on behalf of the opposite party no. 2 and the statement to that effect made in paragraph 11 of the main petition that he is ready to keep the informant with full dignity and honour and the offer being accepted by the informant, the opposite party no. 2 was granted provisional anticipatory bail for one year. The learned Court below was supposed to issue notice to the informant and on her appearance, the opposite party no. 2 was to take the informant to the matrimonial house to keep her as wife with full dignity and honour. The provisional anticipatory bail was to be confirmed by the learned Court below in three eventualities (i) On substantial restoration of the matrimonial harmony within a period of one year (ii) if the informant fails to appear before the learned Court below (iii) if the informant gets reluctant to reconcile the issue.

It appears from the order dated 10.04.2017 passed by learned SDJM, Jhunjharpur that the provisional anticipatory bail of opposite party no. 2 was confirmed on the ground that it was the informant who got reluctant to reconcile the issue though she remained in the matrimonial house from 31st of August, 2016 to 30th of September, 2016 but no such application with the accusation of torture was filed within that period before the learned Court below. Subsequently, an application was filed to



the effect that she was being tortured at the hands of the opposite party no. 2 and other in-laws family members, but no evidence with support to the said accusation was produced, as a result, opposite party no. 2 withdrew the petition for restitution of conjugal rights and filed a divorce case. The same was also done by opposite party no. 2 four months prior to the filing of the petition for cancelling the provisional anticipatory bail.

Learned counsel for the petitioner submits that the opposite party no. 2 has failed to comply the conditions as a result and issue could not be reconciled between the parties, whereas the order of the learned SDJM, Jhanjharpur reflects that the petitioner, i.e., the informant got reluctant to reconcile the issue.

In the circumstances, this Court is not inclined to interfere with the cancellation of the provisional anticipatory bail of opposite party no. 2 which has already been confirmed. The parameters for grant of the bail and its cancellation are quite different. The bail is usually granted on the basis of consideration of nature of accusation, whereas the cancellation can only be done if it is found that the accused misused the privilege of bail by tampering the evidence, getting involved in some serious offence or has suppressed the material facts while obtaining the bail. None



of these grounds have been taken by the petitioner while making prayer for cancelling the bail of opposite party no. 2. A useful reference may have in this regard to the case of **Biman Chatterjee Vs. Sanchita Chatterjee & Anr. reported in AIR 2004 SC 1699**, where it has been held that the grant under Criminal Procedure Code is governed by the provisions of Chapter XXXII of the Code. Section 437 Cr.P.C. does not contemplate either granting bail on the basis of assurance of compromise or cancellation of a bail for violation of the terms of such compromise. It is not open to the trial Court or the High Court to cancel the bail on the ground alien to the ground mentioned for cancellation of bail in Section 437(3) Cr.P.C. Paragraph 7 reads as:-

“Having heard the learned counsel for the parties, we are of the opinion that the High Court was not justified in cancelling the bail on the ground that the appellant had violated the terms of the compromise. Though in the original order granting bail there is a reference to an agreement of the parties to have a talk of compromise through the media of well wishers, there is no submission made to the Court that there will be a compromise or that the appellant would take back his wife. Be that as it may, in our opinion, the Courts below could not have cancelled the bail solely on the ground that the appellant had failed to keep up his promise made to the Court. Here we hasten to observe first of all from the material on record, we do not find that there was any compromise arrived at between the



parties at all, hence, question of fulfilling the terms of such compromise does not arise. That apart non-fulfillment of the terms of the compromise cannot be the basis of granting or cancelling a bail. The grant of bail under the Criminal Procedure Code is governed by the provision of Chapter XXXII of the Code and the provision therein does not contemplate either granting of a bail on the basis of an assurance of a compromise or cancellation of a bail for violation of the terms of such compromise. What the Court has to bear in mind while granting bail is what is provided for in Section 437 of the said Code. In our opinion, having granted the bail under the said provision of law, it is not open to the trial Court or the High Court to cancel the same on a ground alien to the grounds mentioned for cancellation of bail in the said provision of law.”

In view of the discussions made above, this

Court finds no merit in this application, hence, dismissed.

(Dinesh Kumar Singh, J)

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