

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.910 of 2018

Arising Out of PS. Case No.-252 Year-2017 Thana- KHUSRUPUR District- Patna

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1. KUNAL PRIYADARSHI, S/o Sri Rama Shankar Pathak,
 2. Rama Shankar Pathak S/o Late Surendra Pathak, Both R/o Baikathpur, Police Station- Khusrupur, District- Patna
- ... Petitioners

Versus

1. The State of Bihar Through The Principal Secretary, Home Police Department, Government of Bihar, Patna.
 2. The Director General of Police, Bihar, Patna.
 3. The Senior Suprintendent of Police, Patna.
 4. The City S.P., Patna.
 5. The SHO, Khushrupur Police Station, Patna.
 6. Samar Kumar S/o Late Sudhir Kumar, R/o Village- Baikatpur, Police Station- Khusrupur, Distt.- Patna
- ... Respondents
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Appearance :

For the Petitioners	:	Mr. Ranjeet Kumar
For the Respondents	:	Mr. Parth Sarthi (Ga4)

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

3 08-05-2018 Heard learned counsel for the petitioners and the learned counsel representing the State as also the learned counsel representing the private respondent no. 6.

The grievance of the petitioners in the present case is that while granting the petitioners anticipatory bail in Khusrupur P.S. Case No. 252 of 2017 registered under Sections 307/34 of the Indian Penal Code and 27 of the Arms Act, the learned Additional Sessions Judge, VII, Patna City, Patna, has imposed a condition whereunder the petitioners have to return back the ornaments to the informant, which were given by the brother of the informant to his wife, who happens to be daughter and sister of petitioners no. 1 and 2 respectively. Learned counsel for the



petitioners submits that this condition has been imposed besides the condition for anticipatory bail on furnishing bail bond of Rs.10,000/- (rupees ten thousand) with two sureties of the like amount each to the satisfaction of the learned Court below. It is submitted that the condition is not only vague but is also onerous and the exercise of jurisdiction by the learned Additional Sessions Judge, VII, Patna City, Patna, in a case under Section 438 of the Criminal Procedure Code, is not in accordance with law.

It is, further, submitted that the learned Additional Sessions Judge has travelled beyond authority conferred upon him in the matter of grant of anticipatory bail.

On the other hand, learned counsel representing the informant (respondent no. 6), who happens to be the brother of the husband of sister of petitioner no. 1 submits that in the marriage solemnized by his brother, some ornaments were given by him to his wife and even though his brother is the person pursuing his remedy for restoration of conjugal rights with his wife, considering the conduct of these petitioners in course of hearing of the anticipatory bail application it was submitted before the learned Additional Sessions Judge that the informant would have no objection to the grant of bail to the father-in-law



and brother-in-law but the ornament given by the husband to the sister of petitioner no. 1 be returned and upon considering such submission of the informant, the learned Additional Sessions Judge, VII, Patna City, Patna, had been pleased to grant the anticipatory bail. It is, thus, his submission that in fact the return of ornament was a condition precedent for grant of anticipatory bail and that was not opposed by the petitioners in course of hearing of the anticipatory bail application.

Having heard learned counsel for the petitioners, learned counsel representing the State and the private respondents, this Court is of the considered opinion that the learned Additional Sessions Judge, VII, Patna City, Patna, while passing an order granting anticipatory bail to the petitioners has travelled beyond his jurisdiction and the authority conferred upon him under Section 438 of the Criminal Procedure Code. The learned Court has already imposed a condition of furnishing bail bond of Rs.10,000/- (rupees ten thousand) with two sureties for purpose of release of the petitioners on anticipatory bail, but, the said part of the order by which anticipatory bail has been granted has been made conditional and according to the impugned order, the petitioners shall be ordered to be released on anticipatory bail on furnishing bail bond of Rs.10,000/-



(rupees ten thousand) with two sureties after returning back the ornaments to the informant. The condition imposed by the learned Additional Sessions Judge, VII, Patna City, Patna, whereunder he has directed that the release will be ordered after returning of the ornaments is not correct, such a condition is apparently vague and an onerous condition which could not have been imposed for the purpose of grant of anticipatory bail.

Having said so, this Court would while saving the rest of the order, impugned, in the present application, direct for setting aside the condition whereunder the petitioners have been asked to return back the ornaments. That part of the order will not be read in the impugned order passed by the learned Additional Sessions Judge, VII, Patna City, Patna.

The issue of returning back the ornaments may be separately taken by the husband or the informant, as the case may be, in accordance with law in an appropriate proceeding, if so advised.

(Rajeev Ranjan Prasad, J)

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