

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.17128 of 2017

Arising Out of PS.Case No. -54 Year- 2016 Thana -MAHILA PS District- GAYA

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Rupa Kumari Sharma, D/o Late Shivnandan Sharma, Resident of Mohalla-Badhai Tola, P.S.- Sherghati, District- Gaya.

.... Petitioner

Versus

1. The State of Bihar.
2. Kundan Kumar @ Kumar Kundan, Son of Anil Sharma, Resident of Village- Chakand Bigha, P.S.- Chanduli (Chanduli), District- Gaya.

.... Opposite Parties

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Appearance :

For the Petitioner : M/S. Durga Nand Jha, and Vivek Anand
Kumar, Advocates.
For the State : Mr. Iftexhar Mahmood, A.P.P.
For the O.P. No. 2 : Mr. Manish Kumar No. 2, Advocate.

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CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
ORAL ORDER

5 07-02-2018 The petitioner herein, is the informant of Gaya Mahila P.S. Case No. 54/16 instituted under Sections 498 (A), 323, 504 and 506 read with Section 34 of the Indian Penal Code and Section 3/4 of Dowry Prohibition Act, and has filed the present application, under Section 439 (2) of the Code of Criminal Procedure, seeking cancellation of anticipatory bail of her husband namely, Kundan Kumar @ Kumar Kundan, granted by this Court vide order dated 13.01.2017, passed in Cr. Misc. No. 1130 of 2017, in connection with Gaya Mahila P.S. Case No. 54 of 2016.

The above named Kundan Kumar @ Kumar Kundan,



apprehending his arrest in connection with Gaya Mahila P.S. Case No. 54 of 2016, had filed Cr. Misc. No. 1130 of 2017 for grant of anticipatory bail submitting therein that earlier the informant filed a complaint case before the Sub-Divisional Judicial Magistrate, Gaya, on 01.06.2016, and thereafter an F.I.R. being registered as Gaya Mahila P.S. Case No. 54 of 2016. There being inconsistent allegations regarding the demand towards dowry in the earlier complaint and the First Information Report and he had been granted bail in the earlier case. It was also submitted by the counsel that there was a vague and concocted allegation of torturing mentally as well as physically for non-fulfilment of dowry demand and there being false implication of the petitioner therein. It was also submitted that there was no allegation of tampering of witnesses.

This Court considering the submission made on behalf of the petitioner and the materials available on record, granted anticipatory bail in connection with the said case on furnishing bail bound of Rs. 10,000/- with two sureties of the like amount each to the satisfaction of the S.D.J.M., Gaya, subject to the conditions provided under Section 438 (2) of the Code of Criminal Procedure.

The instant application has been filed, seeking



cancellation of anticipatory bail granted to the accused husband of the petitioner, primarily on two grounds. First one is that no notice was ever served to the petitioner while granting anticipatory bail vide order dated 13.01.2017 in Cr. Misc. No. 1130 of 2017 whereas she was already made party, and the second one is that on behalf of the opposite party no.2 herein (petitioner therein), it was falsely submitted that the informant having habit of filing such false cases and earlier a similar case was instituted by the informant, in which the opposite party no.2 was granted bail.

So far the plea taken by the petitioner regarding non-issuance of notice upon her, prior to passing the order of grant of anticipatory bail is concerned, I find no substance in such plea. Under the Code of Criminal Procedure, there is no such provision which makes it obligatory to the Court as to issue notice to the informant while hearing the petition for grant of anticipatory bail, filed under Section 438 of the Code. Issuance of notice upon the informant before hearing such application is not a rule of law nor it is a rule of practice of this Court. In the cases of matrimonial dispute, sometimes notices are issued to the wife for the purposes of mediation/conciliation as to protect the marital relationship and to strengthen the nuptial knot,



which seems to be weakened by criminal prosecution. From perusal of the order dated 17.11.2016 passed by the learned Sessions Judge, Gaya in A.B.P. No. 2667/2016, it is apparent that on behalf of the accused husband (opposite party no.2) it was contended that he was still ready to keep his wife with all dignity but the informant herself was not ready to lead conjugal life. Such submission was advanced before the learned Sessions Judge in presence of the counsel of the informant, but on her behalf such willingness as to lead the conjugal life was neither expressed nor any rebuttal was made even, rather prayer for bail was only opposed. In that background of the facts and situation, this Court thought it meaningless to issue notice to the informant before hearing the anticipatory bail application. The earlier impression of this Court regarding no scope of mediation in the matter, is reinforced from the contentions of this application, as there is no statement about willingness of the informant to restore the matrimonial relation and resolve the dispute. Apart that, in my considered opinion, issuance of notice to the informant before considering the bail application of the accused is not a requirement of law, therefore, it cannot be a ground for cancellation of bail.

Coming to the next plea of the petitioner that a



misleading submission was advanced on behalf of the accused that the informant is in habit of filing such cases and the accused was granted bail in a case got instituted earlier by the informant. I am of the view that in a criminal prosecution while considering bail application, conduct of the informant, as also, antecedent of the accused are not issue of primary consideration, rather these are matter of incidental and ancillary consideration to the main allegations of the prosecution case. It is the allegations, which require primary consideration for grant or refusal of bail. Apart that in the instant application for cancellation of bail, there is no specific and categorical contention that the informant who happens to be the petitioner herein had never got instituted any criminal prosecution against the accused husband and his family member before institution of the instant F.I.R. bearing Gaya Mahila P.S. Case No. 54 of 2016, whereas in paragraph no.3 of the bail application, complaint case number is also mentioned. Therefore, in absence of such specific statement, the submission advanced on behalf of the opposite party no.2 cannot be held misleading. Since the petitioner herein wanted to shake the veracity of such submission made on behalf of the counsel for the opposite party no.2 at the time of hearing of



anticipatory bail, therefore, the onus lies upon her as to prove his case or to disprove such contentions made on behalf of the opposite party no.2 at the time of grant of bail. Here is the situation where the petitioner has only raised such plea, which remains unproved.

The learned counsel for the opposite party no.2 submitted that on account of inadvertent mistake, such submission regarding grant of bail to the opposite party no.2 was made, whereas the said complaint case is pending under the stage of enquiry. Be that as it may, I am of the opinion that grant of bail to the opposite party no.2 in the earlier case as submitted by the counsel at the time of hearing of bail application, was not the sole material consideration for grant of anticipatory bail to the opposite party no.2 vide order dated 13.01.2017.

In my view, rejection of bail when bail is applied for is one thing; cancellation of bail already granted is quite different. It is easier to reject a bail application in a non-bailable case than to cancel a bail granted in such case. Cancellation of bail necessarily involves the review of decision already made and can by and large be permitted only, if by reasons of supervening circumstances, it would be no longer



conducive to a fair trial to allow the accused to retain his freedom during the trial.

In my opinion, deprivation of liberty of a person had serious impact on the mind of a person. Incarceration restricts liberty of a person. If liberty of individual is restricted in larger social interest then such deprivation of liberty must have due sanction of law. Needless to emphasize that the liberty of individual is not absolute, but is a restricted one, therefore, it is known as “regulated freedom”. No one in the society can act in a manner, which may jeopardize the life or liberty of others. In my view, bail is a regulated freedom to the accused and release of accused on bail would still retain constructive control of the Court over him through the sureties. The literal meaning of the word bail is surety.

In the case of Daulat Ram & Ors.-Vs- State of Haryana, (1995) (1) SCC 349, the Apex Court has already considered the issue of cancellation of anticipatory bail and held thus:

“4. Rejection of bail in a non-bailable case at the initial stage and the cancellation of bail so granted, have to be considered and dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of bail, already granted.



Generally speaking, the grounds for cancellation of bail, broadly (illustrative and not exhaustive) are; interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. The satisfaction of the court, on the basis of material placed on the record of the possibility of the accused absconding is yet another reason justifying the cancellation of bail. However, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial. These principles, it appears, were lost sight of by the High Court when it decided to cancel the bail, already granted. The High Court it appears to us overlooked the distinction of the factors relevant for rejecting bail already granted.”

In my considered opinion, unless the petitioner (informant) makes out a case that the opposite party no.2 (accused) after grant of anticipatory bail, have interfered or attempted to interfere with the due course of administration of justice or tampered the evidences and witnesses or evaded or attempted to evade the due course of justice or abused the



concession granted to them or such overwhelming or supervening circumstances have arisen, which have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial, there is no occasion for this Court to cancel anticipatory bail already granted.

In view of the aforesaid discussions and observations, I am of the considered opinion that the present application, seeking cancellation of bail, is devoid of merit and the order of grant of anticipatory bail dated 13.01.2017 passed in Cr. Misc. No. 1130 of 2017 does not require any revisit or interference.

This application is, therefore, accordingly, dismissed.

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(Sudhir Singh, J)

