

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.36508 of 2018

Arising Out of PS.Case No. -40 Year- 2016 Thana -MAHILA P.S. District- VAISHALI(HAJIPUR)

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Chandan Kumar Sahni, S/o Moti Lal Sahni, R/o- Ander Quila, P.S.-
Hazipur, Distt.- Vaishali.

.... Petitioner/s

Versus

1. The State of Bihar.

2. Kalyani Kumari Sahni, W/o Chandan Kumar Sahni, S/o Moti Lal Sahni,
R/o Ander Quila, P.S. Hazipur, Distt.- Vaishali, at present D/o Devendra
Sahni, R/o Ramnagar Colony Chas, P.S. Chas, Distt.- Bokaro.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Amresh Kumar Sinha

For the Opposite Party/s : Mr. Sri Madhuranand Jha

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN

PRASAD

ORAL ORDER

3 27-09-2018

Heard learned counsel for the parties.

A limited issue which has arisen for consideration in
the present case is that as to whether while granting the
anticipatory bail to the petitioner, the learned court below could



have imposed condition to pay a sum of Rs.10,000/- per month as maintenance to his wife.

Learned counsel for the petitioner submits that in fact while considering the anticipatory bail application the court below has usurped the jurisdiction of the Family Court where the application for maintenance brought by the wife is still pending for consideration. It is submitted that such conditions while granting anticipatory bail are in the nature of onerous condition which are not required to be imposed by the court below considering the prayer for anticipatory bail. The order is, thus, without jurisdiction.

Having said so, learned counsel for the petitioner however submits that he is alive to his obligation towards his wife. He is getting a monthly salary of rupees twenty two thousand per month for the present and on his own will he is ready to pay a sum of rupees six thousand per month towards ad-interim maintenance to his wife subject to result of the maintenance case.

Learned counsel representing the opposite party no.2 agrees with the submission of the learned counsel for the petitioner. Learned counsel, however put, emphasis that a sum of rupees six thousand per month must be paid by the petitioner well within time every month so that the opposite party no.2 can



maintain herself in this adverse situation.

Having heard learned counsel for the parties, this Court is of the considered opinion that the court below while considering the application seeking anticipatory bail has wrongly exercised the powers which are conferred upon the Family Court to award ad-interim maintenance. The condition imposed by the learned court below to pay a sum of rupees ten thousand per month is not only without jurisdiction, but is also an onerous condition.

In the opinion of this Court, the court dealing with the bail application matter while in course of argument may call upon the husband to consider paying some maintenance to his wife and with consent some sort of arrangements may be made but no direction to pay a particular amount as maintenance may be given by the court dealing with bail matters. The impugned order in so far as it directs the petitioner to pay a sum of rupees ten thousand per month as ad-interim maintenance to his wife as a condition precedent for grant of anticipatory bail is, therefore, set aside.

The petitioner has on his own undertaken to pay a sum of rupees six thousand per month as ad-interim maintenance to his wife subject to result of the maintenance case which he will



definitely abide by in its terms and spirit.

This application stands disposed off, accordingly.

(Rajeev Ranjan Prasad, J)

Arvind/-

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