

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.28906 of 2017

In
Criminal Miscellaneous No.22508 of 2016

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

Dr. Shakti Prakash Gawaskar, Son of Bhagat Prasad Mehta, Resident of Village- Chakbharo, Post- Paharpur, P.S.- Simri, Bakhtiyarpur, District- Saharsa.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Dr. Anjan Kumari, W/o Dr. Shakti Prakash Gawaskar, D/o Sri Vindeshwari Prasad Singh, Permanent Resident of Village+P.O.- Pasraha, P.S.- Pasraha, District- Khagaria, Presently, Residing at Mohalla- Marufchak, P.S.- Mojahidpur, District- Bhagalpur.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Lala Sheshendra Narayan Rais
For the State	:	Mr. Sri Mritunjay Kumar Nirala, APP
For O. P. No.2	:	Mr. Rama Kant Sharma, Sr. Adv.

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

6 11-04-2018 Heard learned Counsel for the petitioner, learned APP for the State and Mr. Rama Kant Sharma, learned Sr. Counsel for Opposite Party No.2.

The present application has been filed for modification of the order dated 19.05.2016, passed in Criminal Miscellaneous No. 22508 of 2016 to the extent of extending the period or confirming the provisional anticipatory bail granted to the petitioner.

Subsequently, Interlocutory Application No. 1559 of 2017 has been filed for setting aside/stay of the order dated



07.07.2017, whereby, the learned SDJM, Bhagalpur cancelled the bail bonds of the petitioner, in connection with Complaint Case No.2460 of 2015, as contained in Annexure-A to the counter affidavit, filed on behalf of opposite party no.2, since the petitioner was not appearing in the said proceeding, hence, the matter was fixed for framing of charge on 05.05.2017.

The factual matrix of the case would unveil that the petitioner, being the husband of the complainant-opposite party no.2 preferred Criminal Miscellaneous No. 22508 of 2016 with a prayer for bail in connection with Complaint Case No. 2460 of 2015, wherein process has been directed to be issued after cognizance being taken for the offences punishable under sections 498A of the I.P.C. and Sections 3/4 of the Dowry Prohibition Act.

Basic accusation is of torture for non-fulfillment of dowry demand.

The petitioner was granted provisional anticipatory bail on the submission and statement made in paragraph no. 8 of the bail application to the effect that he is ready to keep the complainant as wife with dignity and honour. The learned Court below was directed to issue notice to the complainant for her appearance and make fresh effort to get the issue reconciled.



The provisional anticipatory bail of the petitioner was to be confirmed by the learned Court below in three eventualities; (i) if the matrimonial harmony is substantially restored, or (ii) if the complainant fails to appear before the learned Court below, or (iii) if the complainant gets reluctant to reconcile the issue.

It is submitted by learned counsel for the petitioner that due to adamant attitude of the opposite party no.2, the issue could not be reconciled, which gets reflected from paragraph no.13 of the deposition of Opposite Party no.2- complainant at pre-charge level recorded by the learned Court below, as contained in Annexure-3 to the application, wherein, she has stated that she is not ready to resume the conjugal life at any cost. Paragraph no.13 of the deposition of Opposite Party No.2 reads as under :-

“अगर मेरे पति मुझे सारी बात को भुलकर
अपने साथ रखने को तैयार होंगे तब भी मैं उनके साथ
नहीं रहूँगी ।”

The ordersheet of learned Court below, as contained in Annexure-A to the counter affidavit, reflects that the petitioner moved before the learned Court below by filing an application for confirmation of provisional bail on 17.05.2017 before expiry of the period of provisional bail. Vide order dated 17.05.2017, the matter was fixed for 03.06.2017 for hearing and



framing of charge. But it was again adjourned for 28.06.2017 for framing of charge. On 28.06.2017, the matter was fixed for 07.07.2017. The order dated 07.07.2017 reflects that though the complainant-opposite party no.2 was present, but the petitioner was not present personally. However, Vakalatnama was filed on his behalf, but the learned Court below rejected his Vakalatnama by holding that due to non-appearance of the petitioner, the charge could not be framed. Hence, his bail bonds were cancelled and non-bailable warrant of arrest was directed to be issued against him. Thereafter, I.A. No. 1559 of 2017 has been filed for setting aside the order dated 07.07.2017. However, the said order does not stipulate that petitioner's application for confirmation of bail is pending. Hence, it is submitted that the petitioner deserves confirmation of bail and setting aside the order of cancellation of bail bonds.

Mr. Rama Kant Sharma, learned Sr. Counsel appearing on behalf of opposite party no.2 submits that he is not opposing the prayer of the petitioner with regard to extension of time and setting aside the order, whereby, the bail bonds of the petitioner has been cancelled, but he is more concerned to get the trial concluded within a time frame.

Considering the fact that provisional anticipatory bail



granted to the petitioner was for a period of one year and the same was to be confirmed by the learned Court below in three eventualities, aforementioned, including, if the complainant gets reluctant to reconcile the issue and the deposition of Opposite Party no.2 at pre-charge level reflects that she was not inclined to resume the conjugal life, the learned Court below ought to have disposed of the application of the petitioner preferred for confirmation of anticipatory provisional bail. But it appears that the learned Court below without considering the aforesaid facts as well as the purport of the order of this Court dated 19.05.2016, passed in Criminal Miscellaneous No. 22508 of 2016 as well as the fact that the application of the petitioner for confirmation of provisional bail is pending, has cancelled the bail bonds of the petitioner vide order dated 07.07.2017, as contained in Annexure-A to the counter affidavit.

In the circumstances, the order dated 07.07.2017, passed by the learned SDJM, Bhagalpur, in Complaint Case No. 2460 of 2015, as contained in Annexure-A to the counter affidavit, is hereby, set aside. The period of provisional bail granted to the petitioner vide order dated 19.05.2016, passed in Criminal Miscellaneous No. 22508 of 2016 is extended till 30.04.2018.



It is made clear that the bail bonds of the petitioner will be accepted by the learned Court below on filing of affidavit by the petitioner to the effect that he will appear before the learned Court below on each and every date during trial. The learned Court below will be at liberty to cancel the bail bonds of the petitioner, if he defaults for two consecutive occasions. It is also expected from the learned trial Court to conclude the trial within a period of five months from the date of the order.

Accordingly, the modification application is disposed of.

(Dinesh Kumar Singh, J)

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