

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.53133 of 2013

Arising Out of PS. Case No.-322 Year-2011 Thana- KHAGARIA District- Khagaria

NAJRIN KAHKASHAN D/O MD. MANZAHIR ANSARI RESIDENT OF
NALA ROAD, JAI PRAKASH NAGAR, WARD NO.-22, POLICE
STATION- KHAGARIA, DISTRICT- KHAGARIA

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Md. Ashif Ali @ Nanhe S/O Abdul Hai Ansari Resident Of Village- Gogari,
Police Station- Gogari, District- Khagaria

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Ashok Kumar Singh
For the Opposite Party/s : Mr. Atul Chandra (App)

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

3 05-09-2018 Heard learned counsel for the parties.

The present application has been filed for
cancellation of anticipatory bail of O.P. No. 2 granted vide order
dated 31.1.2012 passed in Cr. Misc. No. 2835 of 2012 in
connection with Khagaria P.S. Case No. 322 of 2011.

The factual matrix of the case is that the petitioner
being the informant lodged Khagaria P.S. Case No. 322 of 2011
with accusation under Sections 341,323,379,498A and 506 of
the IPC and Sections 3 and 4 of Dowry Prohibition Act. In the
said case, O.P. No. 2 Md. Asif Ali alias Nanhe preferred Cr.
Misc. No. 2835 of 2012 with a prayer for anticipatory bail
wherein it was submitted by learned counsels for the petitioner



and the O.P. No. 2 that both sides are ready to resume conjugal life, hence the accusation was not being deliberated. This Court, vide order dated 31.1.2012 allowed the petitioner and O.P. No. 2 to appear before the learned court below when the O.P. No.2 was supposed to take the petitioner to her matrimonial house and keep her with full dignity and honour and considering the aforesaid stand of the parties, O.P. No. 2 was granted anticipatory bail. Thereafter, the petitioner and O.P. No. 2 appeared before the learned court below and a joint application was filed to the effect that petitioner and O.P. No.2 are ready to resume conjugal life, whereupon the learned court below vide order dated 27.2.2012 allowed the O.P. No. 2 to furnish bail bonds and the petitioner to go to her matrimonial house with O.P. No. 2.

It is submitted by learned counsel for the petitioner that subsequently the O.P. No. 2 stopped maintaining the petitioner and started inflicting torture upon her. Thereafter, the petitioner appeared before the learned court below on 25.4.2012 and filed a petition stating her woes in detail. It is further submitted that contrary to the undertaking before this Court, the O.P. No. 2 has performed second marriage with one Farhat Jahan, after taking all her belongings including jewellery.



Hence, the bail of O.P. No. 2 is required to be cancelled.

The parameters of grant of bail and its cancellation are quite different. At the stage of grant of bail basically the nature and gravity of accusation and criminal antecedent of the accused are looked into, whereas at the stage of cancellation of bail the consideration is with regard to whether the accused has misused the privilege of bail by tampering the evidence, or is obstructing the trial or has committed similar or graver offence.

It is well settled law that bail can be cancelled usually in exceptional circumstances. In view of this Court violating the terms of agreement of not keeping promises in true sense of continuing the conjugal life can not be a ground of cancellation of bail.

In this connection a useful reference may be made to the case of Biman Chatterjee Vs. Sanchita Chatterjee and Anr. (2004) 3 Supreme Court Cases 388, the bail was sought to be cancelled on the ground that in spite of the undertaking the husband failed to compromise and keep the wife with him wherein the Supreme Court held that the bail cannot be cancelled on the ground alien to the grounds mentioned under Section 437(3) of the Cr.P.C. Paragraph 7 reads as follows:

“7. 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-fulfilment 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 XXXIII 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.”

This is admitted position that O.P. No. 2 took the petitioner to matrimonial house, though it is alleged that the petitioner was then again subjected to torture. The same, in view of the decision referred to above, cannot be made a ground for cancellation of bail.

In view of the discussions made above, this Court finds that no grant has been made out for cancellation of bail by O.P. No. 2.

Accordingly, this application is dismissed.

(Dinesh Kumar Singh, J)

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