

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.21938 of 2018

Arising Out of PS.Case No. -21 Year- 2014 Thana -THAKRAHA District-
WESTCHAMPARAN(BETTIAH)

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Radheshyam Kushwaha @ Motichand Kushwaha @ Radheshyam @
Motichandra Kushwaha, Son of Indrasan Kushwaha, Resident of Village-
Chak Tola Raypatti, P.S. Bishanpura, District-Khushinagar, Uttar Pradesh

.... Petitioner

Versus

1. The State of Bihar
2. Kalawati devi, Wife of Radheshyam Kushwaha, D/o Panna Lal Kushwaha, Resident of Village-Siswaniya, P.S.-Thakraha, District-West Champaran.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. D.K. Sinha, Sr. Adv.
Mr. Abhinay Raj
For the Opposite Party/s : Mr. Smt. Asha Kumari

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

3 10-09-2018 Heard learned counsel for the petitioner and learned
counsel representing the State as well as opposite party no. 2.

The petitioner is seeking the quashing of order dated 22.11.2017 passed by learned SDJM, Bagha, West Champaran in Trial No. 2375/2016 / 2088/2017 arising out of Thakraha P.S. Case No. 21 of 2014 for the offences alleged under Sections 498(A), 494/34 of the Indian Penal Code and Section 3/4 of the Dowry Prohibition Act.

Learned counsel for the petitioner submits that the petitioner while facing the prosecution at the hand of the opposite



party no. 2 had earlier moved this Court seeking regular bail in Cr. Misc. No. 47018 of 2016. This Court vide its order dated 26.10.2016 in the said Cr. Misc. case granted provisional bail to the petitioner with a direction to the court below to confirm the provisional bail in three eventualities (i) On substantial restoration of the matrimonial harmony within a period of one year (ii) If the informant fails to appear before learned court below (iii) If the informant gets reluctant to reconcile the issue.

Thereafter the petitioner filled up the bail bond and came out on provisional bail. The provisional bail of the petitioner was valid upto 31.01.2017, on the said date he was required to surrender. Learned counsel for the petitioner submits that on 17.01.2017 itself by informing the court the petitioner and the opposite party no. 2 proceeded for Chandigarh. They remained at Chandigarh and unfortunately due to the matrimonial discord taking place once again the wife lodged another case at Chandigarh on 17.02.2017. Learned counsel submits that thereafter the petitioner could not appear in person though he kept on sending his advocate in the court below. His bail bond was cancelled, Section 82 Cr.P.C. process was also issued but ultimately on 04.08.2017 when the petitioner was surrendered in the court below, his bail bond was restored and he was directed to



appear in person on 22.09.2017. It is submitted that thereafter the petitioner did not appear because of his pre occupation with the work but he kept on sending the learned counsel representing him.

In these circumstances, it is submitted that on 22.11.2017 the order passed by the learned court below cancelling the bail bond of the petitioner and direction for issuance of non-bailable warrant of arrest against him is wholly illegal, arbitrary and bad in law. It is submitted that in fact the learned court below had by granting him bail on 04.08.2017 had confirmed the bail which was granted to him earlier pursuant to the order of Hon'ble High Court.

Contesting the submissions of learned counsel for the petitioner, learned counsel representing the opposite party no. 2 submits that the petitioner having committed breach of terms and conditions of the provisional bail, his bail bonds were cancelled twice, thus, in the given circumstance, he cannot be allowed to invoke the jurisdiction of this Court invoking the inherent jurisdiction of this Court which is to be exercised only when either the prosecution is an abuse of the process of court or it becomes necessary to exercise such jurisdiction to secure ends of justice. Neither of the two conditions is present in the instant case.

Learned counsel submits that the fallacy of the



argument of learned counsel for the petitioner lies in his submissions that the provisional bail of the petitioner was confirmed vide order dated 04.08.2017. It is submitted that the petitioner failed to present himself on 31.01.2017 in violation of the conditions of provisional bail, therefore, to secure his presence his bail bonds were cancelled, when he surrendered on 04.08.2017, he was granted bail only with a direction to be personally present on 22.09.2017 but once again the petitioner failed to appear in-person and thereby he has shown that he has no respect for the order of the court. It is submitted that the petitioner had surrendered on 04.08.2017 only when the process under Section 82 Cr.P.C. issued against him. The confirmation could have done only by considering the three eventualities as per direction of this Court. There was no confirmation of provisional bail on 04.08.2017.

Having heard learned counsel for the parties and on perusal of the record this Court of the considered opinion that the petitioner having obtained provisional bail from this Court, once came out of the custody, has been repeatedly committing breach of terms and conditions of bail. He did not surrender on 31.01.2017 at first instance and remained absconding for about six months and it is only when the process under Section 82 Cr.P.C. was issued



that he surrendered on 04.08.2017. The Court took a lenient view of the matter in his favour and once again granted him bail on the same day with a condition that he would appear in-person on 22.09.2017. The petitioner again failed to abide by the order of this Court and remained absconding till date. Learned counsel for the petitioner is not correct in saying that the provisional bail of the petitioner was confirmed vide order dated 04.08.2017.

In these circumstances, this Court does not find any reason to interfere with the impugned order. The application is dismissed with a cost of Rs. 10,000/- against the petitioner to be paid to the opposite party no. 2 for indulging her in contesting a frivolous application. Cost shall be paid within a period of two weeks from today, failing which it will be realized through the process of the Court.

(Rajeev Ranjan Prasad, J)

Ved/-

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