

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.14862 of 2018

In
Criminal Miscellaneous No.11500 of 2017

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

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Avinash Jha S/o Dhanajay Jha, R/o Flat No. 203, Veena Shree Apartment ,
New Punaichak, P.S.- Shastrinagar, District- Patna,-800023, at present 35B,
Bags pannervagen Sanditkon, 800060, Sweden.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

with

Criminal Miscellaneous No. 13799 of 2018

Arising Out of PS. Case No.-283 Year-2016 Thana- SHASTRINAGAR District- Patna

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Tanushree Sandilya Jha, W/o Avinash jha, D/o Amar Nath Mishra, Resident
of Gauri Niwas, near Zila School, Laheriasarai, P.S. Sadar Town, District-
Darbhanga.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Avinash Jha, S/o Dhananjay Jha, Resident of Flat no.203, Veenashree
Apartment, New Punaichak, P.S. Shastrinagar, District-Patna, Presently
residing at Bagspannarvagen, 35B, 81160, Sandviken, Sweden.

... .. Opposite Party/s

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Appearance :

(In Criminal Miscellaneous No. 14862 of 2018)

For the Petitioner/s : Mr. Rama Kant Sharma, Sr. Adv. With
Mr. Rajesh Kumar, Adv.

For the Opposite Party/s : Mr. Y.V. Giri, Sr. Adv. With
Mr. Kripa Nand Jha, Adv.

(In Criminal Miscellaneous No. 13799 of 2018)

For the Petitioner/s : Mr. Y.V. Giri, Sr. Adv. With
Mr. Kripa Nand Jha, Adv.

For the Opposite Party/s : Mr. Rama Kant Sharma, Sr. Adv. With
Mr. Rajesh Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
C.A.V.ORDER

6 11-07-2018

Heard learned counsels appearing for the parties.

This application (Cr. Misc. No. 14862 of 2018), has



been filed by the applicant-husband, Avinash Jha, under section 482 of the Code of Criminal Procedure, for modification of the order dated 22.03.2017 passed in Cr. Misc. No. 11500 of 2017, whereby he was allowed anticipatory bail with conditions as laid down under section 438(2) of the Code of Criminal Procedure.

It has been stated that the applicant is working in foreign country and in connection with his job it is necessary for him to go there, and therefore, the condition mentioned in section 438(2)(iii) Cr. P.C. that “the person shall not leave India without the previous permission of the Court”, be modified to this extent.

The filing of the present modification application has necessitated due to non-passing of any order by the Trial Court on the petition for grant of permission to the applicant to go abroad and keeping the same pending. Alternatively, it has been prayed that that the Trial Court may be directed to dispose of the aforesaid petition filed by the applicant.

On the other hand, the applicant-wife, Tanushree Jha by filing Cr. Misc. No. 13799 of 2018 has prayed for cancellation of the anticipatory bail granted to the husband, Avinash Jha.



It has been stated that the main ground for granting anticipatory bail was that before institution of the criminal case divorce had taken place, but the fact is that her signature was fraudulently taken on a paper written in Swedish language, which was used in procuring decree for divorce from the Foreign Court. Therefore, the same has been challenged before the Family Court at Patna.

It has further been stated that the husband is not appearing before the Family Court and he has sought permission from the Trial Court for going abroad. Therefore, it is possible that in order to evade himself from the judicial proceedings, he may escape to abroad, and hence, for the ends of justice it is necessary to cancel his bail.

Learned Senior Counsels appearing on behalf of the parties have vehemently opposed the prayers of each other.

With regard to the application for modification, it has been stated by the wife that section 362 Cr. P.C. permits any Court only to modify the clerical or arithmetical errors. It is also an established law that if something is prohibited by the law or procedure, the same cannot be obtained by using inherent powers.

With regard to cancellation of bail, it has been stated



by the husband that his wife is a well qualified lady and before marriage she was working in Japan. The joint petition (Annexure-C), which was filed before the Swedish Court for dissolution of marriage, is in English, not in Swedish language, on which the wife had put her full signature in English. Therefore, it cannot be said that the signature on the papers was obtained fraudulently. The same gets confirmed from the fact that the aforesaid decree of divorce has been challenged before the Family Court. If this would have been obtained fraudulently, the wife must have filed criminal case.

So far as any of the allegations with regard to torture is concerned, they all have been levelled after divorce and Annexure-A shows that the Swedish Investigating Agencies also did not find any of the allegations to be true.

Husband has no intention to escape abroad for evading from the judicial proceeding, rather he is working in foreign country since long, and therefore, he has sought permission in this regard from the Trial Court.

Having heard the submissions advanced on behalf of the parties and considering the facts and circumstances of the case, this Court is of the considered opinion that this is neither a fit case for cancellation of bail nor for modification of the order



granting bail. Accordingly, both the applications are, hereby, dismissed.

However, the Trial Court is directed to pass necessary orders on the petition filed by the applicant-Avinash Jha for grant of permission to go abroad on the next fixed date. At the same time, the applicant-Avinash Jha is also directed to appear before the Family Court, Patna within a period of one month from today and extend necessary cooperation in expeditious disposal of the case.

(Arvind Srivastava, J)

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