

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.26789 of 2019

Arising Out of PS. Case No.-74 Year-2018 Thana- MAHILA P.S. District- Nalanda

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GULAFSHAN PERVEEN Daughter of Md. Nayeem Quaraishi, through her natural guardianship of mother Roushan Khatoon, Wife of Md. Nayeem Quaraishi, Resident of Village-Chaksadique, Police Station-Islampur, District-Nalanda.

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR
2. Md. Sintu Son of Hasim @ Md. Hasim, Resident of Village-Chaksadique, Police Station-Islampur, District-Nalanda.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Arbind Kumar
For the Opposite Party/s : Mr.Nirmala Kumari

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

2 19-09-2019 Heard learned counsels for the petitioner and the State.

The present application has been filed for cancellation of bail granted to opposite party no. 2, vide order dated 25.01.2019, passed in Criminal Miscellaneous No.76907 of 2018, in Nalanda Mahila P.S. Case No. 74 of 2018, pending in the Court of SDJM, Nalanda at Biharsharif.

The factual matrix of the case is that opposite party no.2 preferred Criminal Miscellaneous No. 76907 of 2018 with



a prayer for custody bail in connection with Mahila P.S. Case No. 74 of 2018 registered for the offences punishable under Sections 504, 506/34 and 376 of the Indian Penal Code.

The prosecution case got initiated on the written report of Gul Akansha Pravin submitted to the S.H.O., Nalanda Mahila Police Station is to the effect that the informant was in love affair with opposite party no.2, Md. Sintu and on promise of marriage, the opposite party no.2 established physical relationship with the informant. But subsequently, the family members of opposite party no.2 opposed the marriage, leading to registration of the present criminal case. However, considering the fact that the medical report of the victim suggesting her age between 18-19 years, the victim refused to get her medical examination done to ascertain the factum of her physical relationship with opposite party no.2 and the offer of the informant with regard to marrying with opposite party no.2, the opposite party no. 2 was granted custody bail vide order dated 25.01.2019, passed in Criminal Miscellaneous No. 76907 of 2018.

Learned counsel for the petitioner submits that as per the school certificate the victim was minor on the date of the occurrence and in that background, she has preferred the present



miscellaneous application with a prayer for cancellation of bail of opposite party no.2 by considering the merits of accusation levelled against him.

Learned APP for the State submits that after considering the merits of accusation, the opposite party no.2 was granted custody bail.

Considering the rival submissions of the parties, this Court is of the view that while considering the bail application of the opposite party no.2, the merits of the accusation was also considered. In the present case, the opposite party no.2 was granted custody bail after considering the medical report suggesting the age of the victim between 18-19 years at the time of the alleged date of occurrence and the admission of the informant that she was in love affair with opposite party no.2 as well as the fact that the victim refused to get her medical examination done to ascertain the factum of her allegation of establishment of physical relationship with the opposite party no.2.

The parameters of grant of bail and its cancellation are quite different. The bail is granted on considering the merits of the accusation; and there is no likelihood of accused being absconding or tampering with the



evidence while at the time of consideration for cancellation of bail it has to be basically looked into as to whether the accused has misused the privilege of bail or has tempered the evidence or has not allowed the investigation/trial to proceed. There is nothing on record to suggest that opposite party no.2 has misused the privilege of bail. However, from the submission of the learned counsel for the petitioner it appears that he wants to get the bail considered *de novo* on merits of the accusation. Hence, this Court is not inclined to interfere in the matter.

This application is, accordingly, disposed of.

(Dinesh Kumar Singh, J)

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