

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.57116 of 2019

Arising Out of PS. Case No.-154 Year-2017 Thana- BARAULI District- Gopalganj

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1. DEWANTI DEVI W/o Late Surendra Upadhyay
 2. Sonali Kumari @ Sloni Kumari D/o Late Surendra Upadhyay
Both are Resident of Village - Devapur, P.S.- Barauli, Dist.- Gopalganj.
 3. Sarita Devi D/o Late Surendra Upadhyay, w/o Vivek Panday Resident of Village - Devapur, P.S.- Barauli, Dist.- Gopalganj. At present Address- Pashchimi Ramakrishna Nagar Sorangapur, P.S.- Fulavari Sharif, Dist.- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Puja Devi W/o Manish Kumar Upadhyay Resident of Village - Devapur, P.S.- Barauli, Dist.- Gopalganj. At Present Address - Daughter of Sanjay Tiwari, Resident of Village - Bhadkuiya Tiwari Tola, Ward No.07, P.S.- Barauli, Dist.- Gopalganj.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Pankaj Kumar Dubey, Adv
For the Opposite Party/s : Mr.Anil Kumar Singh No. 1, APP

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 16-12-2019

Heard learned counsel for the parties.

2. The petitioners were granted anticipatory bail by the learned Sessions Judge, Gopalganj in Barauli P.S.Case No.154 of 2017, a case under Sections 341,323,498(A) I.P.C. and 3/4 of Dowry Prohibition Act on 15.05.2019 vide A.B.P.No.859 of 2019.

3. While granting anticipatory bail, the learned Sessions Judge imposed some onerous condition precedent against petitioner No.1. Hence, this application under Section 482 Cr.P.C. has been preferred for quashing those conditions to give effect to



the anticipatory bail order passed under the Code of Criminal Procedure.

The conditions are :

(i) At the time of surrendering before the learned court below the husband of the legally wedded wife will be present and the petitioner No.1 insist her husband to keep his legally wedded wife with full dignity and honour and give full accommodation.

(ii) In-laws will never create any hindrance in making good harmony between the spouses.

(iii) If the wife-informant is not desirous to live in her in-laws' house accompany with her husband and his relatives on being showing the real truth by showing cogent and reasonable ground which will be scrutinized properly by the learned court, who is seisin of the record on being verified applying prudence as well as on being fully satisfied with the cogent and reasonable ground assigned on the part of legal wedded wife-informant then she will be entitled to get Rs.5000/-(five thousand) per month for her to



save her from destitution and starvation condition to avoid vagrancy.

(iv) If the above mentioned conditions are not being fulfilled towards maintaining the good harmony in between both the spouses or the relatives of the husband-petitioner as per affidavit sworn by him, the accused petitioners will not suppose to avail the privilege of anticipatory bail and in that circumstance, the law will take its own motion accordingly and the informant may file petition for cancellation of bail bonds of petitioners immediately under Section 437(V) Cr.P.C. before the court where case of the legal wedded wife pending and who is seisin of the case record. The learned court below, who is seisin of the case record will ask show-cause immediately without any delay from the accused petitioner while petition for cancellation of bail will be filed in the learned court below, where the case is pending and disposed of the matter in issue expeditiously preferably within 15 days.



(v) Acceptance of bail bond will be subject to filing affidavit to the effect:-

(a) The accused petitioners will file an undertaking supported with affidavit that they will keep the victim accompany with them and never torture her.

(b) The petitioner No.1 will hand over Rs.5000/- (five thousand) to the aggrieved legal wedded victim in her hand for showing the honest desire.

4. Since primary liability to pay maintenance to his wife is on the husband, hence, such direction might have been given to the husband and the widow mother-in-law should not have been compelled to insist the husband for restoration of conjugal life.

5. Condition No.(ii) is not onerous one. Condition Nos.(iii) and (iv) are onerous one against the petitioners. So far condition No.(v) is concerned, the petitioners should only file affidavit that they would not interfere in the life of the informant and other requirements stated in the impugned order need not be required to be followed by the petitioners.



6. The court is empowered to impose such other conditions with only objective to secure the proper utilization of privilege of bail and to prevent misuse of privilege of bail.

7. The conditions of anticipatory bail are broadly enumerated in sub-section (2) of Section 438 Cr.P.C. which reads as follows:

438. “Direction for grant of bail to person

apprehending arrest.-(2) *When the High Court*

or the Court of Session makes a direction under

sub-section (1), it may include such conditions in

such directions in the light of the facts of the

particular case, as it may think fit, including-

(i) a condition that the person shall make himself available for interrogation by a police officer as and when required;

(ii) a condition that the person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;



(iii) a condition that the person shall not leave India without the previous permission of the Court;

(iv) such other condition as may be imposed under sub-section (3) of section 437, as if the bail were granted under that section.”

437. “When bail may be taken in case of non-bailable offence.-(2)*If it appears to such officer or Court at any stage of the investigation, inquiry or trial as the case may be, that there are no reasonable grounds for believing that the accused has committed a non-bailable offence, but that there are sufficient grounds for further inquiry into his guilt, (the accused shall, subject to the provisions of Section 446A and pending such inquiry, be released on bail), or, at the discretion of such officer or Court, on the execution by him of a bond without sureties for his appearance as hereinafter provided.”*

8. With the aforesaid modification in the conditions for anticipatory bail, this application stands partly allowed.



Petitioners shall file bail bond within further six weeks of
extended period.

(Birendra Kumar, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	20.12.2019
Transmission Date	20.12.2019

