

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 1042 of 2019

- Avantika Sahu D/o Shri D. P Sahu, Aged About 27 Years, R/o Q.No. 32, Shrishti Colony, Rajnandgaon, District Rajnandgaon Chhattisgarh., District : Rajnandgaon, Chhattisgarh

---- Petitioner

Versus

1. State of Chhattisgarh, Through Station House Officer, Police Station Chhawani, District Durg Chhattisgarh., District : Durg, Chhattisgarh
2. Nazrul Islam S/o Mohamed Naim, Aged About 41 Years, R/o Camp No.1, Road No. 18, Vaishali Nagar, Bhilai, District Durg Chhattisgarh., District : Durg, Chhattisgarh

----Respondents

For Petitioner – Shri Himanshu Kumar Sharma, Advocate.
For State/Respondent No.1 – Shri Ghanshyam Patel, Govt. Advocate.
For Respondent No.2 - Shri Avinash Chand Sahu, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

09-09-2019

1. This petition has been brought under Section 439(2) of the Cr.PC. praying for cancellation of anticipatory bail granted to respondent No.2 in M.Cr.C.(A) No.449 of 2019 by order dated 28-03-2019.
2. It is submitted on behalf of the petitioner that respondent No.2 while praying for anticipatory bail has misled this Court regarding the facts of the case. Respondent No.2 has been constantly threatening and abusing the petitioner after the incident regarding which a complaint was given to police vide Annexure- A/2 on 03-04-2019. Respondent No.2 has performed marriage with the petitioner after putting her under threat regarding which a complaint was made to the police on 01-10-2018 and another complaint was given on 02-11-2018. Therefore, the petitioner is feeling continuous intimidated. On the basis of false statement made by respondent No.2 his application was allowed by this Court. Further, there is condition imposed on respondent No.2 that he shall not make direct or indirect 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, which has been breached by the respondent No.2. Therefore, on this basis it is prayed that the anticipatory bail granted to respondent No.2 may be cancelled.

3. Learned counsel for respondent No.1/State opposes the petition.

4. Learned counsel for respondent No.2 submits that respondent No.2 has not suppressed any fact from this Court when his application was being considered. The marriage of respondent No.2 with the petitioner was intercommunity marriage because of which the family members of the petitioner were not happy and they have got registered this false FIR against respondent No.2. As the petitioner has gone back to her parental house and has not returned, therefore, respondent No.2 had filed an application under Section 98 of the Cr.P.C. before the Court of SDM Rajnandgaon in which the petitioner did not appear. This fact has been observed by this Court in the order granting bail. There is no ground for rejection of bail granted to respondent No.2.

On behalf of respondent No.2 reliance has been placed on the Judgment of Hon'ble the Supreme Court in the matter of **Abdul Basit alias Raju and others Versus Mohd. Abdul Kadir Chaudhary and another**, (2014) 10 SCC 754 and the order passed on 27-07-2015 by this High Court in **Cr.M.P. No. 469 of 2015** (Savita Khande and another Vs. State of Chhattisgarh and another) and also on the order passed by coordinate Bench of this Court dated 03-07-2017 in **Cr.M.P. No.436 of 2017** (Smt. Sakshi Shroti Vs. Avdhesh Shroti and others).

5. Heard learned counsel for the parties and perused the documents.

6. In M.Cr.C.(A) No.449 of 2019 the application for grant of anticipatory bail was opposed by the State counsel. Thereafter, all the facts and circumstances

were taken into consideration before granting anticipatory bail to respondent No.2. The submission made on behalf of the counsel for the petitioner that the facts have been suppressed by respondent No.2 which is being brought to knowledge of this Court by filing documents which bear the dates prior to the date on which the order was passed by this Court, cannot be taken into consideration. Another ground raised that the petitioner has breached the condition of the order by making inducement, threat or promise etc. for non-disclosure about the incident is not supported with any material. The latest complaint that has been filed by the petitioner that is dated 03-04-2019 also mentioned that respondent No.2 has made efforts by threatening and inducing the petitioner and her father for entering into compromise is an allegation which needs to be enquired and the petitioner can pursue that matter to the police to make enquiry in the same.

7. In the matter of **Abdul Basit alias Raju and others Versus Mohd. Abdul Kadir Chaudhary and another** (supra) it was held by Hon'ble the Supreme Court in para 21 and 27 that:-

“21. It is an accepted principle of law that when a matter has been finally disposed of by a court, the court is, in the absence of a direct statutory provision, functus officio and cannot entertain a fresh prayer for relief in the matter unless and until the previous order of final disposal has been set aside or modified to that extent. It is also settled law that the judgment and order granting bail cannot be reviewed by the court passing such judgment and order in the absence of any express provision in the Code for the same. Section 362 of the Code operates as a bar to any alteration or review of the cases disposed of by the court. The singular exception to the said statutory bar is correction of clerical or arithmetical error by the court.

27. Herein, the High Court has assigned an erroneous interpretation to

the well settled position of law, assumed expanded jurisdiction into itself and passed an order in contravention of Section 362 of the Code cancelling the bail granted to the petitioners herein. Therefore, in our considered opinion, the High Court is not justified in reviewing its earlier order of grant of bail and thus, the impugned judgment and order requires to be set aside.”

There is clear bar to review the order passed earlier under Section 362 of the Cr.P.C. and other allegation made firstly needs to be established, therefore, I do not find any reason to allow this petition. Consequently, the petition is dismissed.

Sd/-

(Rajendra Chandra Singh Samant)
Judge