

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.86258 of 2019

Arising Out of PS. Case No.-1058 Year-2017 Thana- GOPALGANJ COMPLAINT CASE
District- Gopalganj

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Naushad Ali, S/o Maroof Mian, Resident of Sareya Narendra Ghataro Tola,
P.S.- Barauli, District- Gopalganj

... .. Petitioner/s

Versus

1. The State of Bihar
2. Shabana Khatoon, W/o Naushad Ali, Resident of Sareya Narendra Ghataro Tola, P.S.- Barauli, District- Gopalganj.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Kumar Kaushlendra, Advocate
For the Opposite Party/s : Mr. Md. Ataur Rahman, APP

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

2 06-01-2020 This application has been filed for quashing the order dated 06.07.2019 passed in Criminal Misc. No. 80 of 2019 by the learned Sessions Judge, Gopalganj, by which, he was pleased to dismiss the petition filed for modification of order dated 07.09.2018 and 24.09.2018 passed in A.B.P. No. 1566 of 2018 and 1699 of 2018 to the extent to stay the order of making payment of Rs.3000/- per month to the opposite party no.2.

The case in short is that earlier a case under Section 498A of IPC was filed against the petitioner by the opposite party no.2 and in an anticipatory bail application, an order was passed and operative portion of the orders are as such:



in **A.B.P. No.1566/2018:**

“Having considered the aforesaid facts and circumstances of the case and submission of the Id. counsel for the parties and to save the aggrieved legal wedded wife-complainant from destitution and starvation condition, the prayer for anticipatory bail of petitioner is allowed imposing conditions. It is, accordingly, ordered that in the event of arrest or surrender within four weeks from today, the above named petitioners shall be enlarged on bail on furnishing bail bond of Rs.10,000/- with two sureties of the like amount each to the satisfaction of the Id. court below subject to conditions as laid down under Section 438(2) Cr.P.C.

Further condition are as follows:

- i) *In-laws petitioners will file affidavit sworn by them that they will insist the husband of the aggrieved legal wedded wife/complainant to provide good accommodation and livelihood to the complainant separately and will keep the complainant where he resides.*
- ii) *Petitioners-in-laws, will never create any hindrance in making good harmony between both the spouses.*
- iii) *If the aforesaid conditions are not fulfilled by the petitioners, complainant-wife will be entitled to get Rs.3000/- (three thousand) to save her from destitution and starvation condition to avoid vagrancy on every month.*
- iv) *If the above mentioned condition on account of which, the prayer for anticipatory bail of petitioners*



has been considered on failure, the accused-petitioners will not spouse to avail the privilege of anticipatory bail and in that circumstance, the law will take its own motion accordingly and complainant may file petition for cancellation of bail-bonds of petitioners immediately U/S 437(V) Cr.P.C.

v) the acceptance of bail bond of petitioners will be conditions precedent after making payment of Rs.3000/- (three thousand) to the aggrieved-legal-wedded wife for showing the honest desire to save her from starvation condition together with to avoid vagrancy.”

In A.B.P. No. 1699/2018:

“Having considered the aforesaid facts and circumstances of the case and submission of the ld. counsel for the parties and to save the aggrieved legal wedded wife-complainant from destitution and starvation condition, the prayer for anticipatory bail of petitioner is allowed imposing conditions. It is, accordingly, ordered that in the event of arrest or surrender within four weeks from today, the above named petitioners shall be enlarged on bail on furnishing bail bond of Rs.10,000/- with two sureties of the like amount each to the satisfaction of the ld. court below subject to conditions as laid down under Section 438(2) Cr.P.C.

Further condition are as follows:

i) Husband-petitioner will file affidavit sworn by him that he will keep and maintain the aggrieved legal wedded -wife/complainant to provide good



accommodation and livelihood to her separately and will keep the complainant along with him and will obey the conditions imposed in A.B.P. No. 1566/18 while granting anticipatory bail to the in-laws.

ii) Petitioners-in-laws, will never create any hindrance in making good harmony between both the spouses.

iii) If the aforesaid conditions are not fulfilled by the petitioners, complainant-wife will be entitled to get Rs.3000/- (three thousand) to save her from destitution and starvation condition to avoid vagrancy on every month in her hand.

iv) If the above mentioned condition on account of which, the prayer for anticipatory bail of petitioners has been considered on failure, the accused-petitioners will not spouse to avail the privilege of anticipatory bail and in that circumstance, the law will take its own motion accordingly and complainant may file petition for cancellation of bail-bonds of petitioners immediately U/S 437(V) Cr.P.C.

v) the acceptance of bail bond of petitioners will be conditions precedent after making payment of



Rs.3000/- (three thousand) to the aggrieved-legal-wedded wife in her hand for showing the honest desire to save her from starvation condition together with to avoid vagrancy.”

It further appears that thereafter, the informant has filed a maintenance case, being Maintenance Case No. 132 of 2017, in which, also the maintenance was allowed and direction was given to the petitioner to pay Rs.3000/- -per month to the opposite party no.2 as maintenance, which will appear from Annexure-7.

It further appears that petitioner has moved before the learned Sessions Judge for modification of the orders dated 07.09.2018 and 24.09.2018 on the ground that he is paying Rs.3000/- per month to the opposite party no.2 as per the direction of the learned Sessions Judge, vide orders dated 07.09.2018 and 24.09.2018 and now as per the order of the Family Court in maintenance case as well as above orders in anticipatory bail application, he has to pay Rs.3000/- per month as per direction of learned Sessions Judge and Rs.3000/- as per order of Family Court and that will amount to pay the double amount to the opposite party no.2.

It further appears that the learned Sessions Judge has called upon the opposite party no.2 in this case and after hearing



both the parties, vide order dated 06.07.2019 dismissed the modification application filed by the petitioner against which, this application has been filed.

Submission of learned counsel for the petitioner is that the learned Sessions Judge has failed to consider that as per the direction the anticipatory bail application, he is paying Rs.3000/- per month to the opposite party no.2. Now in the changed circumstances, as the Family Court has directed to pay maintenance of Rs.3000/- per month, he is ready to pay the same, as such, the above order passed in the anticipatory bail application be modified, but without appreciating the same, he has dismissed his modification application and that will amount to pay the double of the amount to the opposite party no.2.

Heard learned APP also.

Having heard both sides, in view of the submissions, made, the order dated 06.07.2019 passed by the learned Sessions Judge, Gopalganj, is set aside and the matter is remitted back to the learned Sessions Judge, Gopalganj for consideration of the modification application of the petitioner afresh and after hearing both the parties, i.e. the opposite party no.2 also and considering his submissions, he will pass an appropriate order.



Accordingly, this application is allowed.

(Vinod Kumar Sinha, J)

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