

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.18014 of 2020

In
CRIMINAL MISCELLANEOUS No.3206 of 2020

Arising Out of PS. Case No.-2653 Year-2014 Thana- GOPALGANJ COMPLAINT CASE
District- Gopalganj

=====

BINDA RAM @ BINDA Son of Ganesh Ram Resident of Village-Brahmain,
P.S-Uchakagaon, District-Gopalganj.

... .. Petitioner.

Versus

1. The State of Bihar
2. Geeta Devi Wife of Binda Ram Resident of Village-Barmain, P.S.-
Uchakagaon, District-Gopalganj.

... .. Opposite Party.

=====

Appearance :

For the Petitioner	:	Mr. Jitendra Kumar Singh Mr. Pankaj Kumar Dubey
For the Opposite Party	:	Mrs. Madhuri Lata

=====

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
ORAL ORDER

3 23-02-2021 Heard.

The present application was initially filed under Section 439 and 440 of the Code of Criminal Procedure (hereinafter referred to as Cr.P.C.). However, taking into account the relief sought for in this application, a co-ordinate bench of this court on 20.01.2020 allowed learned counsel to convert this application into an application under Section 482 of Cr.P.C. Pursuant to the said order necessary corrections in the application has been made by the learned counsel for the petitioner and a supplementary affidavit has also been filed to that effect. The same is kept on record. On 12.11.2020 again this



matter was taken up by another co-ordinate bench of this court and an order for issuance of notice to Opposite Party No.2 (Complainant) was passed. From perusal of office note dated 11.02.2021, it appears that notices have been validly served upon the O.P. No. 2. However, when the matter is being taken up today nobody has appeared on behalf of O.P. No. 2.

The petitioner in this application seeks quashing of one of the conditions imposed upon him by the court of learned Sessions Judge, Gopalganj in order dated 03.04.2018 passed in B.P.No. 250 of 2018. The learned court below vide the aforesaid order granted bail to the petitioner and has imposed a condition, requiring him to continue paying a sum of Rs.5000/- to the complainant, failing which the petitioner will not avail the privilege of bail and the complainant will have a right to file an application for cancellation of bail.

The marriage of the petitioner was solemnized with the Complainant on 28.02.2002. The Complainant filed a complaint case before the court of learned Chief Judicial Magistrate, Gopalganj in the year 2014 against the petitioner and her in-laws alleging therein that the accused persons used to torture the complainant and subjected her to cruelty. It was further alleged that the petitioner has solemnized second marriage and hence



committed an offence of bigamy, punishable under Section 494 of the Indian Penal Code. In respect to the said complaint case learned S.D.J.M. Gopalganj took cognizance under Section 498(A) and 494 of the Indian Penal Code. The petitioner in this case was taken into judicial custody on 09.01.2018. An application for grant of bail was preferred by the petitioner before the court of Learned Sessions Judge, Gopalganj, which was heard and allowed by the said court by an order dated 03.04.2018. However, while allowing the prayer for grant of bail to the petitioner, the court below imposed the following conditions: -

“(i) Petitioner will continue to give Rs.5,000/- to his aggrieved legal wedded wife and never discontinue the same and consequent upon discontinuation of depositing Rs.5,000/- to the legal wedded wife to secure her livelihood, husband-petitioner will not suppose to avail the facility of regular bail even for a day and legal wedded wife will right to file petition U/S 437 (v) Cr.P.C for cancellation of bail in the court where the case record is pending



for disposal.

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

The petitioner then sought modification of the aforesaid order before the court below for the reason that he is a poor labourer and he is not in a position to pay the aforesaid amount as a condition imposed upon him. The said modification application was dismissed by the court below vide order dated 09.07.2019.

Learned counsel for the petitioner submits that the petitioner is languishing in custody since 09.01.2018. The petitioner is a poor man and does not have sufficient means to comply with the conditions imposed upon him by the court of Learned Sessions Judge, Gopalganj in its order dated 03.04.2018. He further submits that the court below has fixed the amount of Rs.,5000/- without doing any assessment of the income of the petitioner and as such the said condition is unjust and arbitrary. The petitioner is ready to keep his wife with full dignity and honor and also undertakes to co-operate in the trial after being enlarged on bail.

Learned Counsel for the State was also heard.



There are no two views about the fact that courts while granting bail to the accused persons, having regard to the facts and circumstances of the case, would be justified in imposing necessary, just, reasonable and efficacious conditions to secure the ends of justice. However, it should always be kept in mind that conditions so imposed should not be so excessive, onerous or harsh upon the accused person that it frustrates the entire objective of enlarging the petitioner on bail. While granting bail in disputes arising out of marriage, imposition of condition such as payment of money to the wife is a just condition but while deciding the amount several factors should be taken into account like the socio-economic background of the parties, the income of the person upon whom such condition is imposed, the other legal remedies available in law to the aggrieved party etc. The list can never be exhaustive and will undoubtedly vary depending upon the facts of each case.

After hearing the arguments advanced in this case and perusing the records of the case in hand, it appears that the court below while imposing the condition of payment of Rs.5,000/- to the complainant has neither considered the economic status of the petitioner nor any assessment with regard to the income of the petitioner has been made. As a result of which, since the



petitioner is unable to fulfil the condition imposed upon him, he is behind the bars in spite of the fact that an order of grant of bail has been passed in his favour. Taking into consideration the entire gamut of facts and particularly that the petitioner is in custody since 09.01.2018 i.e., for more than three years, this court is inclined to interfere with the condition imposed upon the petitioner by the court below in order dated 03.04.2018 as the same is onerous.

Therefore, in light of the foregoing discussion, this quashing application is allowed. The following direction/condition: -

“(i) Petitioner will continue to give Rs.5,000/- to his aggrieved legal wedded wife and never discontinue the same and consequent upon discontinuation of depositing Rs.5,000/- to the legal wedded wife to secure her livelihood, husband-petitioner will not suppose to avail the facility of regular bail even for a day and legal wedded wife will right to file petition U/S 437 (v) Cr.P.C for cancellation of bail in the court where the case record is pending



for disposal”

as contained in order dated 03.04.2018 passed by Learned Sessions Judge, Gopalganj in B.P. 250 of 2018, requiring the petitioner to continue giving a sum of Rs.5,000/- is hereby deleted/expunged. However, rest of the conditions contained in the said order is maintained. To the extent as indicated above, the order dated 03.04.2018 passed by Learned Sessions Judge, Gopalganj in B.P. 250 of 2018 is modified. Consequently, the order dated 09.07.2019 passed by the Learned Sessions Judge, Gopalganj in Cr. Misc No. 124 of 2019, rejecting the prayer of modification sought by the petitioner also stands quashed. Further, the court below is directed to release the petitioner on bail at the earliest in light of order dated 03-04-2018 passed by learned Sessions Judge, Gopalganj with its aforesaid modification. Furthermore, it is clarified that the complainant, if not availed already, shall always be at liberty to avail the legal remedies otherwise available to her in law.

(Sudhir Singh, J)

A.K.V.//-

U		T	
---	--	---	--

AFR

