

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.8953 of 2022

Arising Out of PS. Case No.-385 Year-2017 Thana- BIKRAMGANJ District- Rohtas

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Shreya Kumari Wife Of Aniket Singh, D/O- Yogendra Prasad Singh R/O
Village- Khelariya, P.O.- Gotpa, P.S.- Bikramganj, District- Rohtas

... .. Petitioner/s

Versus

1. The State of Bihar
2. Aniket Singh Son Of Harendra Pratap Singh R/O Village- Hisampur, P.S.-
Chandrabak, District- Jaunpur (U.P.)

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Rajesh Kumar Sharma
For the Opposite Party/s : Mr.Binod Kumar

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CORAM: HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR
ORAL ORDER

10 12-04-2023 Heard learned counsel for the petitioner, O.P.

No. 2 and learned A.P.P for the State.

The present petition has been filed for
cancellation of anticipatory bail to the O.P. No. 2 who
was granted anticipatory bail vide order dated
27.10.2021 passed in Cr. Misc. No. 740 of 2020.

It is submitted by learned counsel for the
petitioner that vide order dated 20.05.2019 passed in
Cr. Misc. No. 33098 of 2019, the O.P. No. 2 was
granted provisional anticipatory bail for four months and



learned Court below was directed to confirm the provisional bail of the O.P. No. 2, if he keeps his wife properly. The O.P. No. 2 had again filed second anticipatory bail vide Cr. Misc. No. 740 of 2020 suppressing this fact that learned S.D.J.M, Bikramganj, Rohtas by its order dated 20.11.2019 had not inclined to confirm the provisional bail to O.P. No. 2 and directed to issue non-bailable warrant against him.

It is further submitted by learned counsel for the petitioner that learned Court below had not confirmed the provisional bail of the O.P. No. 2 since O.P. No. 2 failed to comply the order of this Hon'ble Court and refused to keep his wife, the petitioner with dignity and honour which is apparent from the order dated 20.11.2019 passed by learned S.D.J.M, Bikramganj, Rohtas. Thereafter, the O.P. No. 2 had filed second anticipatory bail which was allowed vide order dated 27.10.2021 passed in Cr. Misc. No. 740 of 2020 in the absence of the counsel for the petitioner on the



assertion of O.P. No. 2 that he is ready to pay Rs. 3000/- per month as maintenance to the petitioner.

It is also submitted by learned counsel for the petitioner that second anticipatory bail of the petitioner is not maintainable under Section 438 of the Criminal Procedure Code, 1973, in view of the judgment passed by the learned Apex Court in the case of *Salauddin Abdulsamad Shaikh vs. State of Maharashtra* 1996(1) PLJR (SC) 79 and a judgment passed by this Hon'ble Court in the case of *Mahendra Prasad Singh vs. The State of Bihar*, 2004(3) PLJR 491.

It is submitted by learned counsel appearing on behalf of the O.P. No. 2 that in pursuance to the direction of this Court passed in Cr. Misc. No. 33098 of 2019, the O.P. No. 2 went to the parental home of his wife to bring back his wife but she refused to come with the O.P. No. 2 and also insulted and humiliated him. The O.P. No. 2, in this regard, had filed an application before learned S.D.J.M, Bikramganj, Rohtas on 11.06.2019



which has been annexed as Annexure-3. It is further submitted that being aggrieved with the conduct, attitude and behaviour of the petitioner, the O.P. No. 2 had filed Matrimonial Case No. 989 of 2017 for dissolution of marriage which was allowed *ex-parte* on 07.08.2019.

It is further submitted by learned counsel for the O.P. No. 2 that he had not filed second anticipatory bail petition, rather Cr. Misc. No. 740 of 2020 was filed for modification of the order dated 20.05.2019 passed in Cr. Misc. No. 33098 of 2019 with a prayer to extend/confirm the order dated 20.05.2019 passed in Cr. Misc. No. 33098 of 2019. The present petitioner in the aforesaid modification petition had appeared and filed *Vakalatnama* which is apparent from the order dated 19.02.2020 passed in Cr. Misc. No. 740 of 2020.

It is therefore submitted that this Hon'ble Court, after considering the fact that the petitioner herein is reluctant to live with the O.P No. 2 and not



interested to continue her relationship with O.P. No. 2 as she failed to appear in Matrimonial Case No. 989 of 2017 filed for dissolution of marriage which was allowed *ex-parte* in favour of O.P. No. 2, has allowed Cr. Misc. No. 740 of 2020 filed for modification of the order dated 20.05.2019 and vide order dated 27.10.2021, granted anticipatory bail to the O.P. No. 2 which is under challenge before this Court. While the order was passed, the present petitioner, who is now eagerly interested to cancel the anticipatory bail of O.P. No. 2, who had already appeared in the aforesaid case, did not enter her appearance. The order dated 27.10.2021 granting anticipatory bail to O.P. No. 2 was passed in furtherance of the order passed on 20.05.2019 in Cr. Misc. No. 33098 of 2019. Hence, it can not be treated to be the second anticipatory bail as the order dated 27.10.2021 was passed in Cr. Misc. No. 740 of 2020 which was filed for modifying the order 20.05.2019 passed in Cr. Misc. No. 33098 of 2019.



In that view of the matter, this Court is not inclined to take a different view in the matter.

The petition stands dismissed.

(Sunil Kumar Panwar, J)

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