

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL REVISION No.357 of 2019

Arising Out of PS. Case No.-30 Year-2017 Thana- MAHILA PS District- Darbhanga

SHARAD KUMAR JHA Son of Hemant Kumar Jha Resident of Village -
Nahas Rupouli, P.S. - Bisfi, Distt - Darbhanga.

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR
2. Sweta Devi Wife of Sharad Kumar Jha, D/o Ramanand Mishra Resident of
Village - Rohar, P.S.- Biroul, Distt - Darbhanga.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Sanjeev Kumar Jha
For the Respondent/s : Mr. Anil Kumar

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI

ORAL ORDER

4 14-12-2023 Heard the learned counsels for the parties.

2. The instant revision application is directed against an order dated 6th of February, 2019, passed by the learned Additional Sessions Judge, 4th Court at Dhanbad in Criminal Misc. Case No. 97 of 2017, arising out of Mahila P. S. Case No. 30 of 2017, whereby and whereunder, the learned Additional Sessions Judge pleased to cancel the privilege of anticipatory bail of the petitioner which was



granted by the same Court *vide* order dated 31st, July, 2017, passed in ABP No. 771 of 2017, for the offences punishable under Sections 341, 323, 379, 498A, 506, 504 and 34 of the Indian Penal Code read with Sections 3 and 4 of the Dowry Prohibition Act.

3. Suffice it to say that in the order dated 31st July, 2017, the learned Additional Sessions Judge granted anticipatory bail to the petitioner who is the husband of the *de facto* complainant on condition that in the event of arrest, he would be released on bail by executing a bond of Rs. 10,000/- with two sureties of like amount. In the said order, it is recorded by the learned Judge that both the husband and wife made an undertaking on a plain paper to the effect that the husband would keep his wife with him with proper dignity and honour and the wife would stay in the house of the petitioner, stating, *inter alia*, that the dispute between them was amicably settled and she would stay at her matrimonial home.

4. Subsequently, on 6th of February, 2019, the wife of the petitioner filed an application, stating, *inter alia*, that in respect of Mahila P.S Case No. 30 of 2017, the petitioner



was granted anticipatory bail on his undertaking that he would keep his wife with dignity and honour in his house. However, the petitioner failed to maintain his undertaking and refused to take his wife to his house.

5. The case of the petitioner is that in order to earn his livelihood, he left his house on 18th August, 2017 and the *de facto* complainant left her matrimonial home along with their minor child on 7th October, 2017, without any permission of any inmate of her matrimonial home.

6. The learned Judge cancelled the anticipatory bail because of the fact that the petitioner failed to obey the undertaking, submitted by him in the 4th Court of the learned Additional Sessions Judge, Patna on 31st July, 2017. The said order is under challenge in the instant revision under Section 397 read with Section 401 of the Code of Criminal Procedure.

7. Learned Advocate for the petitioner, at the outset, submits before this Court that anticipatory bail was granted to the petitioner on 31st July, 2017 on condition that in the event of arrest, the petitioner/accused shall be released on executing a bond of Rs. 10,000/- with two



sureties of like amount. The factum of compromise might be a consideration by the Court granting anticipatory bail but it was not a condition for granting anticipatory bail. The impugned order, dated 06.02.2019 wrongly held that the undertaking given by the petitioner that he would take his wife to his house and keep her with dignity and honour was a condition for granting anticipatory bail.

8. It is contended by the learned Advocate for the petitioner that the learned Additional Sessions Judge could not have cancelled the bail solely on the ground that the petitioner failed to keep up his promise made to the Court, as it is not open to Court to cancel bail on a ground alien to grounds mentioned for cancellation of bail under Section 437 of Cr.P.C In support of his contention he refers to a judgement of a Co-ordinate Bench in the case of ***Md. Mustafa @ Md. Mustafa Sah***, reported in ***2015 (2) PCCR 309***.

9. It is also submitted by the learned Advocate for the petitioner that marriage between the petitioner and opposite party, being his wife, has been dissolved by a decree of divorce passed in Matrimonial Case No. 204 of



2016 *vide* judgement, dated 14th February, 2020. Therefore, there is no marital tie between the parties and the pendency of the case under Section 498A of the IPC and other penal provisions filed by opposite party is of no consequence. Therefore, the impugned order of cancellation of anticipatory bail is illegal and passed beyond the jurisdiction of the Court.

10. Having heard the submissions made by the learned Advocate for the petitioner, this Court points out, at the outset, that an order of cancellation of bail is an interlocutory order and is not a final order and, therefore, the Criminal Revision Petition is not maintainable. The decision of Hon'ble Supreme Court in the case of ***State of Gujrat vs. Salimbhai Abdulgaffar Shaikh and Ors.***, reported in ***(2003) 8 SCC 50*** may be relied on in this regard. At the same time, this Court is not unmindful to note that the High Court possesses inherent powers to be exercised because *ex debito justitiae* to do real and substantial justice for the administration of which alone Courts exist. The power has to be exercised to prevent abuse of the process of Court or to otherwise secure the ends of justice.



11. In the case in hand, it appears to this Court that the impugned order was passed by the learned court below holding, *inter alia*, that the settlement between the parties was a condition for granting anticipatory bail. The order dated 31st July, 2017 does not say so. The submission made on behalf of the petitioner as well as the informant/wife in the Court below on 31st July, 2017 to the effect that the dispute between husband and wife was amicably settled, might be a consideration for the Court to grant anticipatory bail but it was not a condition. It is needless to say that the Chapter XXXIII of the Cr.P.C. deals with “Provisions as to Bail and bonds”. The circumstances under which bail is granted; discharge of sureties; procedure when the bond has been forfeited; cancellation of bond and bail bond, are dealt with in Section 440 to 450 of the Code of Criminal Procedure.

12. Section 438 (1) provides the circumstances or the factors upon which anticipatory bail can be granted. They are:

- i) Nature and gravity of acquisition;
- ii) The antecedents of the applicant including the



fact as to whether he has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;

iii) The possibility of the applicant to free from justice; and

iv) Where the acquisition has been made with the object of injury or humiliating the applicant by having him so arrested.

13. It is held by the Hon'ble Supreme Court in *Sushila Aggarwal & Ors. Vs. State (NCT of Delhi) & Anr.*, reported in *(2020) 5 SCC 1* that an anticipatory bail under Section 438 of Cr.P.C is not invariably limited to a fix period. Normally, it should be in favour of the accused without any restriction of time. However, in the facts and circumstances, if the Courts so considers it warranted, it may grant anticipatory bail only for a fixed period. The order dated 31st July, 2017 was not an order for anticipatory for a fixed period, therefore, there was no restriction of time for the accused to obtain regular bail under Section 437 or 439 of the Cr.P.C.

14. Furthermore in *Arnesh Kumar vs. State of*



Bihar and Anr., reported in ***(2014) 8 SCC 273***, a detailed discussion has been made and directions have been issued by the Hon'ble Supreme Court that under what circumstances, an accused in a case under Section 498A read with Section 4 of the Dowry Prohibition Act can be arrested.

15. In an offence under Section 498A of the IPC or Section 4 of the Dowry Prohibition Act, the Police Officer cannot automatically arrest an accused under the parameters laid down in Section 41 of Cr.P.C.

16. The learned Judge, while passing the order, failed to consider the direction of the Hon'ble Supreme Court in *Arnesh Kumar* (supra).

17. Considering such fact of the matter, this Court is of the view that the impugned order was passed in violation of the provisions of law and, therefore, the order is abused of the process of Court. In order to secure ends of justice, the impugned order is required to be set aside.

18. Therefore, the order dated 06.02.2019 is quashed and set aside. Accordingly, the order dated 31st July, 2017 is revived.



19. The revision application having been treated as an application under Section 482 of the Cr.PC is allowed on contest.

(Bibek Chaudhuri, J)

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