

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.71686 of 2022**

In

CRIMINAL MISCELLANEOUS No.69916 of 2019

Arising Out of PS. Case No.-215 Year-2019 Thana- JHAJHA District- Jamui

RAKESH KUMAR Son of Yogendra Prasad @ Yogendra Prasad Sah R/o
Mohalla- Railway Colony Q.N. 231/A, P.S.- Jhajha, District- Jamui

.. ... Petitioner/s

Versus

1. The State of Bihar
2. ANNU KUMARI D/o Harendra Sah Presently residing at Village- Beloti,
P.S.- Sahpur, Dist- Bhojpur at Ara

... ... Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Shivesh Kumar Singh

For the Opposite Party/s : Mr. Awadhesh Kumar Singh

**CORAM: HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR
ORAL ORDER**

4 15-03-2023 Heard learned counsel for the petitioner and learned
APP for the State.

The petitioner has filed the instant application for modification of the order dated 06.07.2022 passed in Cr. Misc. No. 69916 of 2019, whereby while granting bail to the petitioner in connection with Jhajha P.S. Case No. 215 of 2019, the petitioner was directed to deposit Rs. 15,000/- per month as maintenance in the account of the informant (wife).

The petitioner had moved before the Hon'ble Supreme Court against the order dated 06.07.2022. However, the Hon'ble Supreme Court vide order dated 30.10.2022 passed in Special Leave Petition No. 9891 of 2022 dismissed the petition as not pressed.



It is submitted that the petitioner got a job in the Indian Railway and is getting a meagre amount of Rs.27,800/- per month as salary. He has to bear the cost of medical treatment of his ailing mother and father, who are under regular treatment of doctor. He is living in joint family and he has to maintain his entire family members.

It is submitted that the petitioner has also filed a petition for restitution of conjugal right in the Family Court, Ara bearing Case No. 197 of 2019, which is pending for adjudication.

Opposite party no. 2 has also filed a maintenance suit bearing case no. 197 of 2019 before the Family Court, Aara/Bhojpur, which is pending.

While referring to a decision of the Hon'ble Supreme Court in Cr.Appeal No. 344 of 2009, learned counsel for the petitioner submitted that the Hon'ble Supreme Court has held that the Court would not be justified in awarding maintenance to the wife and children in course of hearing the anticipatory bail application. Thus, the order passed by this Court awarding maintenance to the opposite party no.2 is against the spirit of the judgment of the Hon'ble Supreme Court.

It is further submitted that the petitioner is still ready



and willing to keep his wife with full dignity and honour. It is further submitted that the period of surrender before the court below for grant of bail may be extended by further four weeks.

Per contra, learned counsel for the opposite party no.2 has opposed the prayer made by the learned counsel for the petitioner for modification of the order dated 06.07.2022. He submitted that the order passed by this Court is perfectly correct. He submitted that so far as economical condition and liabilities of the petitioner are concerned, petitioner's father is pensioner and receiving good amount as pension and at the time of marriage of petitioner, he got a sale deed registered in his favour by mother of O.P. No. 2 with respect to land measuring 3.241 decimals, in support of which a photocopy of sale deed has been brought on record (Annexure-B) by way of filing counter affidavit.

It is further submitted by learned counsel for the opposite party no. 2 that Cr. Misc. No. 69916 of 2019 was taken up on 05.07.2022, but at the time of hearing, petitioner's counsel requested for some time so that he may seek instruction from his client as to whether he is ready to pay monthly maintenance of Rs. 15,000/- or not. On the very next date i.e. on 6.7.2022, case was taken up and learned counsel for the petitioner in-



formed this Court that his client is ready to pay the maintenance amount of Rs.15,000/- if he is granted anticipatory bail.

Further, it is submitted by learned counsel for the O.P. No. 2 that the statutory provision made under Section 362 Cr.P.C. puts an embargo on the Court to alter or review the judgment or final order passed on merits after signing it, except to correct a clerical or arithmetical error in the same. Reliance placed by the learned counsel for the petitioner on the judgment of Hon'ble Supreme Court is not in consonance with the facts and circumstances of the present case. The order dated 06.07.2022 in Cr. Misc. No. 69916 of 2019 was passed with the consent of the learned counsel for the petitioner and the amount of monthly maintenance was ordered to be paid to the O.P. No. 2.

Vide order dated 06.07.2022, this Court had passed the following order in Cr. Misc. No. 69916 of 2019:

“Heard learned counsel for the petitioner and learned APP for the State.

The instant application for anticipatory bail has been filed by the petitioner apprehending his arrest in connection with Jhajha P.S. Case No. 215 of 2019 instituted for the offence under Sections 341, 323, 498A, 504, 34 of the Indian Penal Code and Section 3/4 of the Dowry Prohibition Act.

As per allegation in the FIR, due to non-fulfillment of dowry demand of Rs. One lakh, petitioner along with other family members started to



abuse and torture her mentally and physically.

It is submitted by learned counsel for the petitioner that petitioner is husband of the informant and he is ready to keep the informant as wife with full dignity and honour.

The aforesaid offer of the petitioner has not been accepted by the informant who denies to go to her matrimonial house and live with her husband. However, she prays for some maintenance for her survival as she is a housewife and she is not able to maintain herself.

In the alternative, learned counsel appearing on behalf of the petitioner, on instructions, submits that petitioner is ready to give Rupee fifteen thousand per month from the month of July, subject to furnishing bank account number by the informant to the petitioner.

In the changed circumstance, learned counsel for the informant admits that he shall provide bank account number of the informant to the petitioner within a period of one week from today. On receipt of the bank account number of the informant, the petitioner shall deposit Rs. 15,000/- (Fifteen Thousand) in first week of every month commencing from July as maintenance in the account furnished by the informant.

Having heard learned counsel for the parties and considering the submissions made on behalf of the petitioner, this Court is inclined to enlarge him on bail. The petitioner, above named, in the event of his arrest or surrender before learned Court below within a period of four weeks from today, shall be released on anticipatory bail on furnishing bail bonds of Rs. 10,000/-(Ten Thousands) with two sureties of the like amount each to the satisfaction of learned SDJM, Jammui in connection with Jhajha P.S. Case No. 215 of



2019, subject to the conditions as laid down under section 438(2) of the Cr.P.C.

The bail bonds of the petitioner shall be accepted by the learned court below on showing receipt of deposit of Rs. 15,000/- (for the month of July) by the petitioner in the account of the informant.

The aforesaid payment will be subject to any order passed in the maintenance case for final settlement.”

From the aforesaid order, it appears that the counsel for the petitioner had agreed that the petitioner is ready to pay the maintenance of Rs.15,000/- to the opposite party no. 2 and on that basis anticipatory bail was granted to the petitioner. It was further directed that the said amount of maintenance paid to the opposite party no. 2 would be subject to any final order passed in the maintenance case.

Hence, this Court is not inclined to modify the order dated 06.07.2022. Accordingly, this application for modification stands dismissed.

(Sunil Kumar Panwar, J)

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