

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.710 of 2019

Arising Out of PS. Case No.-11 Year-2017 Thana- EKANGARSARAI District- Nalanda

SANJAY KUMAR @ SANJAY PRASAD Son of Kamal Prasad @ Kamla Prasad Resident of Village- Sankhpalli, P.S.- Islampur, District- Nalanda, at present posted as Lab Attendent in All India Institute of Medical Science, Patna, P.S.- Phulwari Sharif, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Manita Kumari Wife of Sanjay Kumar @ Sanjay Prasad, daughter of Bindu Prasad Resident of Village- Kundwapar, P.S.- Ekangarsarai, District- Nalanda, at present posted as Constable, BMP-5 Patna, P.S.- Phulwari Sharif, District- Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Manoj Kumar, Adv., Mr. Dharmendra Kumar Singh, Adv., Mr. Shashi Shekhar Singh, Adv.
For the Respondent/s	:	Mr. Ram Sumiran Rai, Adv.

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI

ORAL JUDGMENT

Date : 01-02-2024

Heard learned Advocate for the petitioner as well as learned APP for the State.

2. It will be profitable to state the background of the instant revision, at the outset before dealing with the impugned order to come a decision, as to whether the impugned order is illegal, inoperative and inefficient.

3. On the basis of a Police report a case under Section 498A/341/323/504/34 of the I.P.C. read with Sections 3 and 4 of



the Dowry Prohibition Act was registered against the petitioner. The petitioner prayed for anticipatory bail before this Court. A Coordinate Bench in Cr. Misc. No. 24900 of 2017, disposed of the said application for anticipatory bail vide order dated 4th September, 2017 with the following direction:-

“In view of such, this application is disposed off with direction to petitioner to surrender before the Court below i.e. Sub Divisional Judicial Magistrate/concerned court, Hilsa, District Nalanda within a period of four weeks from today in connection with Ekangarsarai P.S. Case No. 11 of 2017, along with Affidavit that he will keep the wife with full dignity and care. In the event the Court below finds that petitioner is willing to keep his wife with full dignity and care, the court below will release the petitioner on provisional bail to its own satisfaction for a period of six months and will issue notice to informant (wife) and will monitor the relationship between the parties by calling both of them every month in the court and in the event the court below finds that good conjugal relationship have been restored between husband and wife and wife does not make any complain about the physical and mental torture committed by the petitioner during the period of her stay with him or court below finds that good



conjugal relationship could not be restored on account of indifferent attitude of wife or the wife does not appear even after valid service of notice, the court below shall confirm the provisional bail of the petitioner after six months.”

4. By passing the impugned order on 2nd May, 2019, the learned learned S.D.J.M., Hilsa, Nalanda rejected the said provisional bail granted by this Court in favour of petitioner and he was directed to surrender before the Court of the learned Magistrate. Moreover, petitioner's application under Section 239 of the Cr.P.C. was rejected by the learned Magistrate in the same order dated 2nd May, 2019. Though, the order of provisional bail was granted by a Coordinate Bench on 4th September, 2017, the pre condition of granting provisional bail seemed to be an attempt of reconciliation of the dispute and mediation of a charge under Section 498A of the I.P.C. and other penal provisions. It is needless to say that in a criminal case, at an inter locutory, stage the parties cannot be directed to stay together, where there was allegation of mental and physical cruelty. The conditions for provisional bail, in my humble and respect opinion was not satisfactory. No such condition can be imposed, as a condition for



anticipatory bail directing the accused to restore peaceful conjugal life with the defacto complainant.

5. Since, 2017, the law on this subject has undergone a sea change in *Arnesh Kumar Vrs. State of Bihar*, reported in **(2014) 8 SCC 273**, the Hon'ble Supreme Court clearly held that in any offence where the punishment is prescribed up to seven years, the accused cannot be directly arrested by the Police. The accused will have to be served a notice under Section 41(A) of the I.P.C. by the Police. The Police will record the statement of the accused persons, then consider as to whether for the purpose of investigation, he is required to be arrested. Even then the Investigating Officer shall have to take permission of the Learned Magistrate, showing the special reasons for the arrest of the accused persons. The provision of Section 41(A) and the decision of **Arnesh Kumar (supra)** was passed in the light of an offence under Section 498A of the I.P.C. Thus, generally an accused cannot be arrested in an offence under Section 498A of the I.P.C. without compliance Section 41(A) of the Cr.P.C.

6. In **Sushila Aggarwal And Others Vrs. State (NCT of Delhi) And Another**, reported in **2020 (5) SCC 1**, a Constitution Bench of the Hon'ble Supreme Court held that protection of anticipatory bail under Section 438 of the Cr.P.C. is



not invariably related to a fixed period. Normally, it should inure in favour of the accused without any restriction of time. However, in the facts and circumstances of the case, if the Court show consider it warranted, it may grant anticipatory bail only for a fixed period. Therefore, when an anticipatory bail is granted by the higher Court, it is obligatory for the trial court to grant bail to the accused, on his surrender. Anticipatory bail cannot be granted directing the parties to lead conjugal life, meaning thereby settlement of the offence under Section 498A of the I.P.C.

7. Though, I am not unmindful to note that by way of judicial proceeding an offence under Section 498A of the I.P.C. can be compounded, but in the statute the offence has been made non-compoundable. The stage of compounding comes at the time of trial of the case or even at an earlier stage when both the parties approached the court that their dispute has been amicably settled. Therefore, the High Court can not grant an anticipatory bail on the ground that the husband will take his wife and keep her with him for six months and after six months, if the wife does not have any complain against the husband, the order of bail will be confirmed. Since, the decision passed in Criminal Miscellaneous Case No. 24900 of 2017, on 4th September, 2017 by a Coordinate Bench, this Court has only persuasive value in respect of the said



judgment and in view of above discussion, this Court does not want to accept the conditions imposed by the Coordinate Bench, while granting anticipatory bail in 2017.

8. For the reasons stated above, the instant revision is disposed of directing the petitioner to surrender before the trial court and on his surrender he will be released on bail under Section 437 of the Cr.P.C.

9. Since, charge-sheet has been filed against the petitioner, question of discharging him from the case does not arise. Therefore, second part of the order, passed by the learned Magistrate, refusing the prayer of the petitioner for discharging him, is affirmed.

10. Let a copy of this order be sent to the court below for information and necessary action.

(Bibek Chaudhuri, J)

pravinkumar/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

