

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.77801 of 2023

Arising Out of PS. Case No.-73 Year-2020 Thana- MAHILA P.S. District- Patna

Nitish Kumar, son of Sri Ram Vinay Singh R/o vill - Sonbhadra, P.S. -
Banshi, Distt. - Arwal.

... .. Petitioner

Versus

1. The State of Bihar
2. Archana Sharma D/o Suresh Singh R/o vill - Khajuri, P.S. - Naubatpur,
Distt. - Patna. At present residing at Shivpuram vijay Nagar, Bailey Road,
P.s. - Rupaspur, Distt. - Patna

... .. Opposite Parties

Appearance :

For the Petitioner : Mr. Rakesh Kumar Sharma, Advocate
For the Opposite Party : Mr. Jharkhandi Upadhyay, APP

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

9 08-08-2024

Heard the parties.

2. The present application has been filed for quashing the order dated 19.04.2022 passed by the learned Judicial Magistrate, 1st Class, Patna, in Mahila P.S. Case No.73 of 2020, by which the bail bonds of the petitioner has been cancelled in compliance of the order dated 20.01.2021 passed by the learned Sessions Judge, Patna in A.B.P. No.7274 of 2020. The petitioner has also prayed for quashing the order dated 24.05.2023 passed by the Sessions Judge, Patna in Criminal Revision No.149 of 2022, by which the revision preferred against the order dated 20.01.2021 has been dismissed.

3. It is an admitted position that the petitioner and the opposite party no. 2 are the husband and wife and there is matrimonial dispute between them. The petitioner was granted anticipatory bail by the District Judge, Patna on his



assurance to the Court that he will stay with opposite party no.2 but, the petitioner has not been able to honour the undertaking given by him during the course of hearing of anticipatory bail petition.

4. I had called both the parties i.e. the husband and wife in Court and tried to settle the dispute but, it seems that there has been irretrievable breakdown in the relationship between the parties. The petitioner is paying a maintenance of Rs. 15,000/- per month to the opposite party no. 2.

5. In the opinion of this Court, no Court can force the husband and wife to stay together if they are not willing to stay together and the Court cannot impose such an onerous condition that if the petitioner stays with opposite party no.2 then he shall be enlarged on bail otherwise he will remain in custody.

6. Considering the law laid down by the Hon'ble Supreme Court in the case of *Arnesh Kumar vs. the State of Bihar* reported as (2014) 8 SCC 273, I am of the view that the condition mentioned in the bail dated 20.01.2021 order, cannot be sustained.

7. In these circumstances, the impugned order dated 19.04.2022 passed by the learned Judicial Magistrate, 1st



Class, Patna, in Mahila P.S. Case No.73 of 2020 is hereby quashed. The petitioner will remain on the same bail bond executed by him earlier pursuant to the order of the District Judge, Patna. He will participate regularly in the criminal case filed by the opposite party no. 2.

8. At this stage, Mr. Rajesh Kumar, learned counsel appearing on behalf of the opposite party no. 2 submits that a maintenance case being Maintenance Case No. 248M/2021 is pending before the Additional Principal Judge, Patna but the same is fixed for ex-parte hearing as the petitioner is avoiding appearance in that Court. Now the petitioner has got knowledge of the maintenance case. The petitioner will appear in the maintenance case No. 248M/2021 on 19th of August, 2024 in the Court of Additional Principal Judge, Patna, and thereafter, the case will proceed expeditiously. It is directed that the maintenance case shall be decided within three months from 19th of August, 2024. The case will proceed *ex-parte* against the non-cooperative party. In case the petitioner appears on 19th of August, 2024, the opposite party no. 2 will not insist for further *ex-parte* hearing of the case. The order for fixing the case for *ex-parte* hearing earlier shall be recalled on 19th of August, 2024 and thereafter, the case will proceed. If thereafter either of the



parties do not cooperate the Court, the Additional Principal Judge, Patna will proceed against the non-cooperating party.

9. Mr. Rajesh Kumar has also submitted that a DV case No.112/2019 is pending in the Court of learned Judicial Magistrate, Patna. The petitioner has appeared in that case. The Magistrate is directed to expedite the hearing of the DV Case No.112 of 2019 and conclude the same at the earliest. The DV case cannot be kept pending as the prayer of the victim is for residence right and for maintenance. The Magistrate will be vigilant and should proceed in the DV case with due diligence.

10. It is needless to say that the petitioner will continue paying the maintenance amount of Rs.15,000/- every month as directed earlier. The petitioner shall pay the arrears of maintenance within one year from today, failing which his bail bond shall be cancelled.

11. With the aforesaid observations and directions, this application is allowed.

(Sandeep Kumar, J)

Jagdish/-

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