

18-12-23 अभय पट्टी की काफ़ी है। यह पुकार पर अभय पत्र उपस्थित है।
पुनिक के मार्केपर फि 11-4-2023 पर अभय पत्र का तहत पुन।
तार फि 15-01-2024 तहत मार्केसा

जे.
अ. न्या. य.

15-1-24

अधिवक्ता निधन / हस्तान्तरण के कारण
अधिवक्तागण ने स्वयं को न्यायिक कार्य से अलग रहे।
दि. 16-1-24 वास्ते... आदेश / लेखा
अ. न्या. य.

16/01/2024 File presented for order.

Order

1. A petition has been filed on behalf of informant on 11/04/2023 to cancel the bail of the accused person namely Mukesh Sah. The rejoinder to the petition has been filed by the defence on 09/08/2023. Petition taken up for order.

2. It has been submitted on behalf of the Informant Sunita Devi that the accused Mukesh Sah was granted bail by Ld District and Sessions Judge Bettiah vide BP No. 3000/20 dated 08/01/2021 with condition that the 'petitioner along with his wife i.e. informant of this case shall appear before the learned lower court once in a month till six months and learned lower court shall examine their relation with each other and after finding their relation satisfactory, bail shall be confirmed. If relations will not be good then bail shall be cancelled by the learned lower court after six

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months. It is submitted further that the order Ld District and Sessions Judge Bettiah is clear that if relation is not satisfactory bail shall be cancelled by the learned lower court after six months'. It is submitted further that the accused husband Mukesh Sah even after so many days neither kept the informant nor went to call, while she also has a child with her who is still in her parent's house. Thus as per the terms and conditions laid by Ld District and Sessions Judge Bettiah vide BP No. 3000/20 dated 08/01/2021 the bail bond of the accused Mukesh Sah may be cancelled and he may be taken in custody.

3. On contra, on behalf of the accused it has been submitted the petition dated 11/04/2023 is not maintainable and deserves to be rejected. And submits further that accused-husband has been continuously making sincere effort to take back his wife and his children and the present case is nothing but false, farce and concocted one and the accused husband Mukesh Sah is innocent and has not committed any offence rather has been implicated in this false. He further submitted that the accused petitioner has neither subjected informant, Sunita Devi to any physical or mental cruelty nor has demanded dowry and was implicated in false case with Gopalpur PS Case No. 57/2020 i.e the present case. It is submitted further that the present petition was filed in the court with ill intention and maliciously only to see the accused person in jail and to harass the accused and the allegations made therein are false and baseless. The learned defence counsel submitted further that further that accused-husband has been continuously trying and is ready to keep his wife and his child with respect and honour but the informant having much love and affection towards her parents and brother refuses to live together with her husband. It is further submitted that the accused went to his in-laws house to take his wife and his son on 09/04/2021 but he was assaulted and beaten badly and was admitted to Govt Hospital where fardbeyan was taken on 10/04/2021 and Majholia PS Case No. 302/31 dated 01/06/2021 was instituted against his in-laws family members. It

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'petitioner along with his wife i.e. informant of this case shall appear before the learned lower court once in a month till six months' but no one either the husband or wife, the victim appeared before the court during the period of six months as to examine their relation with each other and find whether their relation was satisfactory to confirm or cancel the bail. And it was only after one year of the bail informant on 08/03/2022 approached the court for cancellation of bail as accused husband failed to comply the conditions of bail and then after her testimony again filed a petition on 11/04/2023 for cancellation of bail. And it is also brought to the court notice about the assault committed upon the accused husband when he went to take his wife and child and for which a case have been registered with Majholia police station with PS Case No. 302/21 dated 01/06/2021.

5. Considering the submissions of the parties and the materials on record I find that it is true that the accused has been granted bail Ld District and Sessions Judge Bettiah vide BP No. 3000/20 dated 08/01/2021 with observations and directions that *the 'petitioner along with his wife i.e. informant of this case shall appear before the learned lower court once in a month till six months and learned lower court shall examine their relation with each other and after finding their relation satisfactory, bail shall be confirmed. If relations will not be good then bail shall be cancelled by the learned lower court after six months.'* The petition dt. 08/03/2022 was filed after a gap one year and two months and second one was made soon after the sole testimony of the informant was completed and was discharged on 11/04/2023 it itself suggest that the said petitions was filed only on ulterior motive to harass and pressurize the accused person only and the informant has not produced any cogent material in support of her contention. Cancellation of bail is a serious matter. Of course, the Court has power to cancel the bail, but it should be exercised sparingly and when the same is absolutely necessary, particularly in cases where it is alleged that the accused have misused his bail, threatened the witnesses,

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is also submitted that after being released on bail the accused –husband took his wife and child with him on courts order and after one month of stay his wife i.e. the informant on 08/02/2021 fled away with her brother and maternal uncle .Thus the accused Mukesh Sah have not violated or jumped any conditions of his bail bond and the accused may be permitted to stay on his bail .And lastly prayed for rejecting the petition of the informant dated 11/04/2023.

4. Heard both the sides and perused the record . From perusal of the case record it is apparent that F.I.R. was registered against the accused Mukesh Sah and u/s. 341/323/498 A/504/506 r/w s. 34 IPC vide Gopalpur PS Case No. 57/20 dated 07/05/2020 and cognizance in the case have been taken u/s 341/323/498A/504/506 IPC and 3/4 DPA on 23/09/2020 and the record after securing the appearance of the accused persons is on stage of prosecution evidence and the informant Sunita Devi have examined herself on 24/12/2022 and thereafter no witnesses have been produced and then the present petition dated 11/04/2023 was filed for cancellation of the accused husband bail . From further perusal ,it also transpires that the accused-husband Mukesh Sah was granted bail by Ld District and Sessions Judge Bettiah vide BP No. 3000/20 dated 08/01/2021 with condition that *the petitioner along with his wife i.e. informant of this case shall appear before the learned lower court once in a month till six months and learned lower court shall examine their relation with each other and after finding their relation satisfactory, bail shall be confirmed. If relations will not be good then bail shall be cancelled by the learned lower court after six months.* And in light of the bail the accused filed his bail bond on 09/01/2021 with an undertaking to keep his wife with full honour and dignity and took his wife to his house .And on 08/02/2021 a petition by accused person was filed to bring to the notice of the court that the informant along with her family members left the house of the accused after assaulting his mother without informing the accused –husband Mukesh Sah. The ncondition clearly mentions

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tampered with the evidence or hampered the investigation or stalled the further proceedings of the Court. But the case in hand neither any threats has been given to the witnesses by the accused person nor he tempered with the evidences of this case. And the court cannot jump to a conclusion to cancel the bail where both parties have been directed to appear before the court once in a month till six months which appears to this court the paramount condition for either confirm or cancel the bail. And this court simply cannot assume and presume that relation between the informant and accused husband was satisfactory or not without them approaching the court as in accordance with the condition laid in the said order of Ld District and Sessions Judge Bettiah.

6. Under these facts & circumstances I find no merit in the petition dated 08/03/2022 and 11/04/2023 of the informant and accordingly both petition is hereby *dismissed*.

The record is fixed on 27/01/2024 for prosecution evidence .

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16-01-24
SDJM
Bettiah