

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.286 of 2014

=====

Pankaj Kumar, Son of Kedar Prasad, Resident of Mohalla-Power Heavy
Bageshwari Foor Weir Central School, Shivpuri, P.S.- Kotwali, District- Gaya

.... Petitioner

Versus

1. The State of Bihar through Home Secretary, Govt. of Bihar, Old Secretariat,
Patna
2. The Officer-in-Charge, Mahila P.S., Bihar Sharif, Nalanda
3. Mrs. Maheshwari Sah, the I.O., Mahila P.S., Bihar Sharif, Nalanda
4. Mr. Awadh Prasad, Son Of Late Bihari Ram, Main Road, Rajgir, District-
Nalanda

.... Respondents

=====

Appearance :

For the Petitioner/s : Mr. Mani Bhushan Kumar, Advocate

For the Respondent/s : Mr. Prabhat Kumar Singh, SC-12

=====

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 27-01-2015

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

The petitioner has been made named accused in Bihar
Sharif Mahila P.S. Case No. 88 of 2013 registered for the offences
punishable under Sections 498A, 323, 341 and 354 read with 34 of
the Indian Penal Code as well as Sections 3 & 4 of the Dowry
Prohibition Act. He filed an application under Section 482 of the



Code of Criminal Procedure before this Court vide Cr. Misc. No. 7516 of 2014 for quashing of the aforesaid FIR. A Bench of this Court vide order dated 25th February, 2014 while issuing notice to the opposite party no. 2 directed that in the meantime, no coercive steps shall be taken against the petitioner in connection with the aforesaid case. It has also been clarified in the aforesaid order dated 25th February, 2014 that the investigation of the case had to be carried out expeditiously and completed within a period of two months.

It has been contended that the said order was communicated to the Court of the learned Chief Judicial Magistrate, Nalanda. However, the police apprehended the petitioner on 21st March, 2014 in connection with the said case and produced him before the Court but the Court refused to remand him to custody in view of the order passed by this court in Cr. Misc. No. 7516 of 2014.

In the present application filed under Articles 226 and 227 of the Constitution, the petitioner seeks a direction to be issued to the respondents to pay Rs. 10 lacs as compensation for illegal arrest, physical and mental torture and detention of the petitioner for about 15 hours in the Mahila Police Station, Bihar Sharif, Nalanda on 21st March, 2014.



In my view, the application is misconceived. Several disputes questions of fact have been raised in the writ petition which cannot be adjudicated in a writ proceeding. It is apparent from the order dated 25th February, 2014 that the investigation of the case was not stayed. I have no doubts in my mind that arrest is part of investigation. The order passed in the aforesaid Cr. Misc. No. 7516 of 2014 was communicated to the Court and not to the police.

Section 41 of the Code of Criminal Procedure gives discretion to the police officer who may, without an order from the Magistrate and even without a warrant arrest any person in the situations enumerated in that Section. It is open to the investigating agency, in course of investigation, to arrest any person who has been concerned with any cognizable offence or against whom reasonable complaint has been made or credible information has been received, or a reasonable suspicion exists of his having been so concern.

Hence, there was no illegality on the part of the police in arresting the petitioner and producing him before the Court. I further find that the Court below has rightly refused to remand the petitioner to judicial custody in view of the aforesaid order dated 25th February, 2014 passed in Cr. Misc. No. 7516 of 2014 as a Bench of this Court had directed not to take any coercive action

against the petitioner in connection with the aforesaid case.

For the reasons recorded hereinabove, I find no merit in the present application. Accordingly, the application is dismissed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

U		T	
---	--	---	--