

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.709 of 2015

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1. Tej Narayan Tejaswi S/o Girja Prasad
 2. Tapesht Tejaswi S/o Sh. Tej Narayan Tejaswi Both Resident of Qt
No.6080 , Sector 4/F , Bokaro Steel City, Jharkhand .

.... Petitioner/s

Versus

1. The State of Bihar Through D.G.P.Bihar, Patna.
2. The City Superintendnet of Police, Patna, Bihar.
3. SHO.Pirbahor , Police Station , Patna Bihar.
4. Mohd. Zalalludin, Inspector ,Pirbahore Police Station , Patna Bihar.
5. Parmeshwar Sahni, Ispector Pirbahore PoliceStation ,Bihar.
6. Anup kumar S/o late Damodar Sao, Resident of Mohalla- Bakarganj,
Natrah Gali Lane, Behind Bikaner and Jaipur Bank, Ashok Rajpath
Patna-800004.
7. Vinay krishna kumar s/o late Damodar Sao Resident of Mohalla-
Bakarganj, Natrah Gali Lane, Behind Bikaner and Jaipur Bank, Ashok
Rajpath Patna-800004.
8. Swati Raj D/o Arup kumar Resident of Mohalla- Bakarganj, Natrah
Gali Lane, Behind Bikaner and Jaipur Bank, Ashok Rajpath Patna-
800004.
9. Meera Sao W/o Anup kumar Resident of Mohalla- Bakarganj, Natrah
Gali Lane, Behind Bikaner and Jaipur Bank, Ashok Rajpath Patna-
800004.
10. Saurabh Raj s/o Anup kumar Resident of Mohalla- Bakarganj, Natrah
Gali Lane, Behind Bikaner and Jaipur Bank, Ashok Rajpath Patna-
800004.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjay Kumar

For the Respondent/s : Mr. Kundan Bhadur Singh

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**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR
SINGH**

ORAL ORDER

2 28-08-2015 The petitioners have been made accused in Pirbahore

P.S. Case No.39 of 2011 dated 12.02.2011 registered under

Section 498A of the Indian Penal Code.

2. According to the informant of the case, namely, Swati



Raj, she was married to petitioner No.2, Tapesw Tejaswi on 11th February, 2010. In the FIR the informant has alleged that she was being subjected to cruelty in various ways by her husband and in laws for non-fulfillment of demand of Rs.30 lacs, a flat and a car in her matrimonial home. She has alleged that she was being physically assaulted by the accused persons as a result of which her physical condition has deteriorated to a great extent.

3. It is contended by the learned counsel for the petitioner that during investigation, petitioner No.1 Tej Narayan Tejaswi, who is father-in-law of the informant was arrested on 1st October, 2012 by the Investigating Officer of the case. He was produced before the learned Chief Judicial Magistrate, Patna on 02.10.2012 and on the same date, he was remanded to judicial custody. He filed an application for bail under Section 437 of the Code of Criminal Procedure before the learned Chief Judicial Magistrate, Patna on 5th October, 2012 which was rejected by the learned Chief Judicial Magistrate vide order dated 6th October, 2012. Thereafter, he filed an application for bail before the learned Sessions Judge, Patna. During pendency of his application for bail, the police submitted chargesheet against him on 26th November, 2012 pursuant to which the learned Chief Judicial Magistrate took cognizance of the offence. The Sessions Court granted bail to petitioner No.1 on 21st



January, 2013 whereas petitioner No.2 Tapesw Tejeswi was granted anticipatory bail by the Supreme Court. It has been submitted that the detention of petitioner No.1 for 111 days in custody was wholly illegal and arbitrarily. According to him, the procedure prescribed under Section 41A of the Code of Criminal Procedure was not followed before the remanding the petitioner to judicial custody.

4. In view of the submissions made above, the petitioner has made the following prayers in paragraph 1 of the application :-

“1. That the petitioner no.1 who was working as Senior Manager, at Bokaro Steep Plant, Jharkhand and who was continued to his service regularly, being completely ignorant about the registration F.I.R. NO.39/2011 dated 12.02.2011 against him and his family member under Section 498A IPC and 3/4 of D.P. Act. It is submitted that the investigating officer (Respondent No.4 without making any effort to arrest the petitioner no.1 or his family members, on 13.10.2011, falsely represented before the CM, Patna that petitioners and his family members had been absconding and evading their arrest and thereby the investigating officer Sh. Md. Zalalluddin illegally procured the NBW against the petitioners and his family members on 14.10.2011 and on the basis of aforesaid illegal NBW the police arrested the petitioner no.1 from Bokaro, on 01.10.2012 and on false and frivolous excuse that investigation was going on, the petitioner o.1 was kept in jail for 111 days, illegally arbitrarily and with ulterior motive extort heavy amount from the petitioner or in alternative to murder the petitioner no.1 in jail in connivance with one Sh. Anup Kumar and others above named and due to their influence and use of illegal means, despite the fact that due to the acute diabetic condition the petitioner no.1 was not in such health condition that he could be kept in jail even for one day. It is submitted that due to illegal custody of 111 days, both kidney of the petitioner no.1 were badly damaged and presently the petitioner no.1 has been battling for his life and he is on dialysis. It is submitted that the fundamental right guaranteed under Article 21 r/w Article 14 of the Constitution of India are brutally violated by the erring police officer as well as the concerned judicial officers. It is submitted that being aggrieved with the aforesaid and subsequent act of the respondents, the petitioners are left with no alternative but to approach this Hon’ble

Court for justice and in particular for the following amongst other reliefs :-

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- (i) Issuance of an order, direction or an appropriate declaration thereby declaring that procurement of non-bailable warrant dated 14.10.2011 by the respondent NO.5, from the Court of Chief Judicial Magistrate, Patna in connection with Pirbahore P.S. Case No.39/2011 dated 12.02.2011 under Section 498A IPC, ¾ of D.P. Act against the petitioner No.1, who was posted as Senior Manager, Bokaro Steel Plant and was regularly attending his duty, on the false and frivolous ground that petitioner No.1 had been evading his arrest and absconding as completely illegal, irregular and in contravention of the provision of law.”
 - (ii) Issuance of an order, direction or an appropriate declaration thereby declaring that the Chief Judicial Magistrate, Patna has acted in very casual and Cavalier manner and without following the relevant provision of law and guidelines in this regard, has issued the Non-bailable Warrant against the petitioners and issuance of such NBW was illegal and irregular in the eyes of law, since inception, and
 - (iii) Issuance of an order, direction or an appropriate declaration thereby declaring that the arrest of petitioner no.1 on 01.10.2012 by the Respondent No. 6 as illegal, and
 - (iv) Issuance of an order, direction or an appropriate declaration thereby declaring that judicial custody of 111 days to the petitioner no. 1, who was suffering from acute diabetic and was taking injection of insulin two time in a day and against whom there was no serious allegation, was highly illegal and arbitrary and with ulterior motive to kill the petitioner no. 1 inside jail in connivance with private respondents above-named , and
 - (v) Issuance of an order, direction or an appropriate declaration thereby declaring that the judicial custody of 111 days of the petitioner, on the false and frivolous ground that investigation was going on, however, no investigation was done after the arrest of the petitioner no. 1, as is evident from perusal of Case Diary was wrong, illegal and highly inhumane,
 - (vi) Issuance of an order, direction or an appropriate declaration thereby declaring that the causing of unexplained delay of 56 days by the police, in filing Chargesheet, from the arrest of the petitioner no. 1, despite the fact that the investigation was already completed before the arrest, is sufficient evidence that the police was acting in connivance of the private respondents with ulterior motive to murder the petitioner no. 1 in jail, and
 - (vii) Issuance of an order, direction or an appropriate declaration thereby declaring that supervision done by the Superior police officer was illegal and without application

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- of mind, and
- (viii) Issuance of an order, direction or an appropriate writ in the nature of mandamus thereby directing an independent and impartial investigating agency liked CBI or SIT to initiate appropriate criminal proceeding against the guilty police officers and the private respondents abovenamed and also against the erring Judicial Officers con concerned, and
 - (ix) Issuance of an order, direction or an appropriate writ in the nature of mandamus thereby directing the respondents to pay exemplary compensation, as would be determined by this Hon'ble Court keeping in view of the extraordinary fact and circumstances of the present case, to the petitioners, alongwith the cost of litigation, and/or
 - (x) Any other relief or reliefs to which this Hon'ble Court may deem fit and proper under the facts and grounds mentioned herein below, in the present case, in the interest of justice.

5. In my view, the application is thoroughly misconceived.

The petitioner no.1 did not challenge the order of remand passed by the learned Chief Judicial Magistrate either in revision or under Section 482 of the Code of Criminal Procedure. His remand by the Magistrate to custody was by judicial orders passed in a substantive criminal case. The Courts below have considered his application filed on behalf of the petitioner No.1 under Section 437 and 439 of the Code of Criminal Procedure and passed order in accordance with law. When the petitioners are facing trial in a cognizable offence, they cannot say that detention of petitioner no.1 was illegal or arbitrary. The innocence of the petitioner is yet to be proved during trial of the case. At this stage, when the petitioners have already been granted bail, I am not inclined to entertain this application in which several academic

issues have been raised.

6. Accordingly, the application is dismissed.

(Ashwani Kumar Singh, J)

Sanjeev/-

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