

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.38901 of 2014

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1. Ram Sakal Das S/o Jagdish Das @ Late Mahedeo Das Resident of Village Allang Parghari, P.S. Sabour, District Bhagalpur, presently posted P.S. Chandan, District Banka.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Parwati Devi @ Gangiya Devi D/o Ketu Das Resident of Village Dediya, P.O. AND P.S. Fulidamar, District Banka.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Dewendra Narayan Singh

For the Opposite Party/s : Mr. Ajay Kumar No.2(App)

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

5 29-07-2015

The present application has been filed for modification of the order dated 19.02.2014 passed in Cr. Misc. No. 8235 of 2014 whereby the provisional bail of the petitioner was extended for a further period of six months for conducting the DNA test of the petitioner, complainant and first girl child of the complainant.

I.A. No. 982 of 2015 has been filed for quashing the order dated 13.05.2015 whereby non-bailable warrant has been issued against the petitioner.

The petitioner was granted provisional anticipatory bail for six months in Complaint Case No. 51 of 2010, wherein processes were directed to be issued after cognizance being taken for the offences punishable under Sections 323, 376, 498A, 504 of the Indian Penal Code.

The accusation is of establishing forceful



physical relationship, performing marriage and thereafter inflicting torture. On denial of marriage and birth of a child, on joint prayer, the learned Court below was directed for getting conducted DNA test of the petitioner, complainant and first child of the complainant. The provisional bail of the petitioner was to be confirmed if DNA test reflects that child is not of the petitioner but if the report reflects otherwise then petitioner was directed to surrender and pray for regular bail. The period of provisional bail was further extended for a period of six months vide order dated 19.02.2014 passed in Cr. Misc. No. 8235 of 2014.

It is submitted by learned counsel for the petitioner that due to the non-cooperative attitude of the complainant the DNA test was not done, whereas it is submitted by learned counsel for the complainant that due to the latches on the part of the petitioner the DNA test could not be done.

Considering the fact that petitioner is a police officer posted in Begusarai, as last indulgence the order dated 13.05.2015, whereby non-bailable warrant has been issued by learned Sub-Divisional Judicial Magistrate, Banka in Complaint Case No. 51 of 2010 is hereby set aside.

The provisional bail of the petitioner is further extended for a period of three months.

It is expected from the petitioner and the

complainant to appear before learned Court below on 13th of August, 2015 when learned Court below will fix a date for getting the DNA sample drawn for DNA test.

The provisional bail of the petitioner will be confirmed by learned Court below, if it is found that DNA test does not reflect that child is of the petitioner but if the DNA test report reflects otherwise then petitioner will surrender and pray for regular bail. The provisional bail of the petitioner will also be confirmed by learned Court below, if learned Court below finds that DNA test is not being done due to the latches on the part of the complainant.

It is made clear that no modification application shall be entertained in future.

Accordingly the modification application is disposed off in connection with Complaint Case No. 51 of 2010, pending in the Court of learned Chief Judicial Magistrate, Banka.

(Dinesh Kumar Singh, J)

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