

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.10875 of 2014

Arising Out of PS.Case No. -1021 Year- 2012 Thana -SAMASTIPUR COMPLAINT CASE
District- SAMASTIPUR

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1. Gurudev Paswan S/O Late Ram Swarup Paswan
2. Sunaiana Devi W/O Gurudev Paswan Both Are Resident Of Village -
Motipur, P.S. - Rosera, Dist. - Samastipur

.... Petitioners

Versus

1. The State Of Bihar
2. Usha Devi , D/O Buchchu Paswan Resident Of Village - Motipur, P.S. -
Rosera, Dist. - Samastipur, At Present Resident Of Barhgaon, P.S. -
Hasanpur, Dist. -Samastipur

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mrs. Mira Kumari
For the Opposite Party/s : Mr. Raj Ballabh Singh(App)

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL ORDER

7 02-09-2015 Since this case has been restored by a separate order passed

in Cr.Misc.No. 50075/2014 the parties have also been heard on

merits.

The petitioners, father-in-law and mother-in-law, facing
prosecution for offence under section 498A of the Indian Penal
Code have a cutout defence that whatever has been done, if at all
true, as alleged in the F.I.R., would primarily make the husband of
the complainant, O.P.No.2, liable for offence under section 498A
of the Indian Penal Code but then such husband of the
complainant being the son of the petitioners is himself missing for
more than last 4½ years.

Learned counsel for the petitioners in this regard as



referred to the First Information Report of Rosera P.S. Case No. 234/2012, which was instituted on the version given by petitioner no.1 in capacity of the father of the husband of the complainant of the present case (Complaint Case No. 1021/2012) which was filed only on 1.10.2012 more or less by way of her counter version/ defence of the first case filed by petitioner no.1.

In the considered opinion of this Court if the version given by petitioner no.1 before the police in Rosera P.S. Case No. 234/2012 is correct, both the petitioners shall be automatically become entitled for grant of privilege of anticipatory bail but if that case was a false case and brought only by way of an attempt to torture the complainant by wrecking up false allegation against the complainant because the son of the petitioners had already married another lady, whose living in the house was seriously objected to by the complainant, the petitioners being the members of joint family will not be entitled for privilege of anticipatory bail.

This Court, therefore, had pointedly asked the question to the learned counsel for the petitioners as with regard to the fate of the case filed by petitioner no.1 alleging offence under sections 364 and 341 of the Indian Penal Code against as many as ten persons including the complainant Usha Devi. Learned counsel for

the petitioners, however, submits that she has got no instruction on this issue.

Let it be noted that this Court in fact in order to ascertain this very aspect had issued notice by an order dated 4.6.2014 to O.P.No.2 but on account of requisite not being filed within the prescribed period the application against her had already stood dismissed.

At this stage counsel explains that earlier the application was restored but then it again got dismissed.

In the considered opinion of this Court the manner in which this case has been conducted will only go to show that the petitioners did not want O.P.No.2 to appear before this Court.

Under such circumstances this Court would grant privilege of anticipatory bail to petitioner no.2, mother-in-law, namely, Sunaiana Devi, and if she surrenders before the court below within a period of four weeks from today, she shall be released on bail on furnishing bail bond of Rs.10,000/- (ten thousand) with two sureties of the like amount each to the satisfaction of the S.D.J.M., Rosera in C.R.No. 1021/2012, Tr.No. 2834/2013, subject to the following conditions:

(i) That both the bailors will be a close relative of the petitioner who will give an affidavit giving genealogy as

to how they are related with the petitioner. The bailors will also undertake to inform the Court if there is any change in the address of the petitioner.

(ii) That the bailor shall also state on affidavit that he will inform the Court concerned if the petitioner is implicated in any other case of similar nature after her release in the present case and thereafter the Court below will be at liberty to initiate the proceeding for cancellation of bail on the ground of misuse.

(iii) That the petitioner will be well represented on each and every date of trial and if she fails to do so on two consecutive dates, her bail will be liable to be cancelled on this ground alone.

The same privilege, however, cannot be given to petitioner no.1, Gurudev Paswan, unless the police has submitted a charge sheet in the criminal case filed by him. In this regard this Court has found from the order of the court below that O.P.No.2 having appeared before the court had specifically taken a plea that the son of the petitioners was actually residing in the same house and false case had been filed under sections 364 and 341 of the Indian Penal Code. Such alleged false case was filed by non-else but by petitioner no.1 and therefore if the police has not submitted any

charge sheet, the defence version of the petitioner no.1 also will fall flat on the ground.

That being so, the prayer for anticipatory bail of petitioner no.1 is hereby rejected and he is directed to surrender before the court below within the same period of four weeks.

If the court below after making enquiry in the connected Rosera P.S.Case No. 234/2012 would find that the police has submitted the charge sheet, the petitioner shall be immediately released on bail but if on the other hand it is found that the police has not submitted the charge sheet the case is either pending for investigation or has already been declared to be false, petitioner no.1 shall be taken into custody and thereafter he will have the liberty to file an application for regular bail.

With the aforesaid observations and directions this application is disposed of.

(Mihir Kumar Jha, J)

surendra/-

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