

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.5828 of 2015

Arising Out of Complaint Case No. -931c of 2013 Thana -NALANDA
COMPLAINT CASE District- NALANDA (BIHARSHARIFF)

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1. Jitendra Saw Son of Sri Muni Lal Saw resident of village - Kewai
Mahwatpur, P.S. Khudaganj, District - Nalanda

.... Petitioner

Versus

1. The State of Bihar
2. Juli Devi W/o Jitendra Saw resident of village - Liwadi, P.S. Khudaganj,
District - Nalanda

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Rabi Bhushan Prasad No. 1
For the Opposite Party/s : Mr. Ashok Kumar (App)

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CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI
ORAL ORDER

5 16-07-2015 This is an application, made under Section 438 of the

Code of Criminal Procedure, seeking pre-arrest bail by the
petitioner, namely, Jitendra Saw, in connection with Complaint
Case No. 931C of 2013 under Sections 498A/323/504 of the
Indian Penal Code.

Perused the above application, and materials on record
including a copy of the order, dated 20.12.2014, passed, in A.B.P.
No. 764 of 2014, by the learned Sessions Judge, Nalanda: Camp
Court, Hilsa, rejecting the said application for pre-arrest bail.

Heard Mr. R.B.Prasad No.1, learned counsel for the
petitioner, and Mr. Ashok Kumar, learned APP, appearing for the
State.



The High Court, while exercising its powers under Section 438 Cr.P.C., stands on the same footing as does a Sessions Judge inasmuch as a High Court and Sessions Judge have coordinate jurisdiction, while exercising power under Section 438 Cr.P.C.

Because of the nature of incriminating materials available against the petitioner, this Court is of the view that in the facts and attending circumstances of the present case, the petitioner has not been able to make out any case calling for giving him benefit of pre-arrest bail.

While, therefore, declining to grant pre-arrest bail to the petitioner, from the submissions of learned counsel for the petitioner, it transpires that in the complaint case aforementioned, summon was initially issued but due to default on the part of the petitioner, warrant of arrest has been directed to be issued.

In the circumstances indicated above, when the warrant of arrest has been directed to be issued because of the default on the part of the petitioner, the petitioner cannot become beneficiary of his own wrong and seek the pre-arrest bail.

Notwithstanding the fact that the prayer for pre-arrest bail has been rejected, it is made clear that if the petitioner appears in the Court below in connection with the case aforementioned and applies for regular bail, the learned Court below shall consider and

dispose of the same in accordance with law, bearing in mind the fact that if the petitioner's presence for the trial is secured, the petitioner shall, ordinarily, be allowed to go on bail unless there is genuine apprehension of the petitioner adversely influencing the witnesses, who may be acquainted with the facts of the case or causing delay of the trial

In view of the above and in the interest of justice, the prayer for pre-arrest bail is hereby rejected.

(I. A. Ansari, J)

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