

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.35266 of 2016

Arising Out of Complaint Case No. -1446 Year- 2013 Thana -GAYA COMPLAINT CASE District-
GAYA

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Avinash Anand Son of Dashrath Prasad Sah, Electric Supply Manpur, Gaya
R/o Dehri, P.S.- Jagdishpur, District- Bhojpur (Ara)

.... Petitioner

Versus

1. The State of Bihar

2. Jyoti Kumari W/o Sri Avinash Kumar @ Avinash Anand Posted as
Junior Engineer North Section Electricity Supply Manpur, Gaya ,
Permanent- R/O- Main Road, Shastri Nagar, P.S.- Kassim Bazar, Dist-
Munger.

.... Opposite Parties

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Appearance :

For the Petitioner : Mr. Sanjeev Kumar, Adv.

For the State : Mr. Dinesh Singh, A.P.P.

For the O.P. No. 2 Mr. Ravindra Kr. Singh, Adv.

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**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA**

C.A.V. ORDER

7 23-12-2016

1. This petition has been listed for order.

2. I have already heard all the concerned parties.

3. Petitioner apprehends his arrest in connection
with Complaint Case No. 1446 of 2013 in which the enquiring
court has found prima facie case for the offences punishable
under Sections 341, 354, 354(B), 354 (C) of the Indian Penal
Code.



4. It is alleged that the complainant was working as Junior Engineer under the petitioner and on 26.03.2013, petitioner caught her hand with bad intention but anyhow, the complainant got released herself from the clutches of the petitioner and informed her family members and thereafter, information regarding the aforesaid incident was given to General Manager. It is also alleged that after making complain to General Manager, petitioner started torturing her mentally and also started giving threatening to her.

5. The complainant originally lodged Mufassil P.S. Case No. 220 of 2013 against the petitioner for the offences punishable under Sections 341, 354, 506 of the Indian Penal Code but after due investigation, police submitted final form finding the accusation untrue. The complainant filed protest petition against the investigation of the police. The concerned court accepted the final form and proceeded on protest petition treating it as complaint petition. The witnesses were examined in course of investigation and after due enquiry, the learned enquiring court found prima facie case under the sections as stated above.

6. Learned counsel appearing for the petitioner submits that petitioner happens to be Sub divisional Engineer



and as a matter of fact, being superior boss of the complainant, he made complain against her and also warned her to be careful and vigilant in her duty but the aforesaid warning of the petitioner caused annoyance to the complainant and she made false allegation against the petitioner at the instigation of his rival employees of his office. It is further submitted that police having made proper investigation found the accusation untrue and, therefore, in the aforesaid circumstance, petitioner deserves the privilege of anticipatory bail.

7. On the other hand, learned counsel appearing for the complainant opposed the prayer pointing out that a co-ordinate Bench of this Court in **Fatte Alam Mian vs. State of Bihar reported in 2015(3) PLJR, 824** has held that generally if process is issued for non bailable offences in a complaint case, the petition under Section 438 of the Cr.P.C. is not maintainable. He submits that in view of the aforesaid dictum of a co-ordinate Bench of this Court, this anticipatory bail petition is not maintainable. He further submits that moreover, petitioner happens to be habitual offender and very serious allegation has been levelled against him.

8. In Fatte Alam Mian vs. State of Bihar (Supra), the issue was not identical to the issue raised in the



present matter. In the aforesaid case, the co-ordinate Bench of this court issued an advisory to the Subordinate courts of this State to exercise their power of bail in particular cases and in the aforesaid case, the co-ordinate Bench of this court has, nowhere, observed that if in complaint case process is issued, the petition under Section 438 of the Cr.P.C. is not maintainable.

9. In P.V. Narasimha Rao v. State (C.B.I.) reported in 1997 Cri.L.J. 961, it has been held by the Division Bench of Delhi High Court that if only summons has been issued in a case, then also, petition under Section 438 of the Cr.P.C. is maintainable. The Division Bench of Delhi High Court relied on the decision of **Puran Singh v. Ajit Singh reported in 1985 Cri.L.J 897** and in **Puran Singh's case**, it was held that..... "The main governing factor for the exercise of jurisdiction under Section 438, Cr.P.C. is the apprehension of arrest by a person accused of the commission of a non bailable offence. The section makes no distinction whether the arrest is apprehended at the hands of the police or at the instance of the Magistrate. The issuance of a warrant by the Magistrate against a person, to my mind justifiably gives rise to such an apprehension and well entitles a person to make a prayer for his anticipatory bail. The High Court or the Court of Session may, however, decline to exercise its powers under Section 438(1), Cr.P.C. keeping in view the fact that the Magistrate has



summoned the accused through bailable warrant i.e., a relief almost similar to what can be granted by the Court under Section 438(1), Cr.P.C. yet that does not mean that the Court has no jurisdiction to grant anticipatory bail to such an accused person. The grant of bail under Section 438(1) by the High Court or the Court of Session is, to my mind, dependent on the merits of a particular case and not the order of the Magistrate choosing to summon an accused through bailable or non-bailable warrant.”

10. In several decisions the above stated principle was reiterated not only by the Benches of this Court but also by the Benches of other Hon’ble High Courts.

11. In the present case, admittedly, after making enquiry the learned court below issued process against the petitioner to procure his attendance and admittedly, after enquiry the learned court below found prima facie case under non-bailable sections and, therefore, in the aforesaid circumstance, the petitioner has reasonable apprehension of his arrest. Therefore, in the aforesaid circumstance, I am of the opinion that this petition filed under Section 438 of the Cr.P.C. is maintainable.

12. On the basis of aforesaid discussions and also taking note of the facts and circumstances of the case, this anticipatory bail petition is allowed and it is ordered that



petitioner, in the event of his arrest/ surrender within four weeks from the date of receipt of this order to the court concerned, shall be released on bail on furnishing bail bonds of Rs 10,000/- (ten thousand) with two sureties of the like amount each to the satisfaction of the Chief Judicial Magistrate, Gaya in Complaint Case No. 1446 of 2013 subject to conditions as laid down under Section 438(2) of the Cr.P.C.

(Hemant Kumar Srivastava, J)

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