

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.27887 of 2016

Arising Out of PS.Case No. -1321 Year- 2012 Thana -BEGUSARAI COMPLAINT CSAE District-
BEGUSARAI

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Surendra Kumar Mahton Son of Rambalak Mahton resident of Village-
Shripur, P.S.- Chairiya Bariyarpur, District- Begusarai.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Kausaliya Devi wife of Surendra Kumar Mahton, D/o Ramayan Mahton,
Resident of Village- Chhatauna P.S.- Nawkothe, District- Begusarai.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ram Sumiran Rai, Advocate

For the Opposite Party/s : Mr. Sri Ashok Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

5 03-03-2017 Heard learned counsels for the petitioner and the

State. However, none is appearing on behalf of the complainant

opposite party no.2.

The petitioner being the husband of the complainant

is apprehending arrest in a complaint case filed with accusation

for the offences punishable under Sections 323, 406 and 498A of

the Indian Penal Code and 3/4 of the Dowry Prohibition Act

wherein process has been directed to be issued after cognizance

being taken.

The basic accusation is of torture for non-fulfillment

of the dowry demand.

It appears from the impugned order that learned



Sessions Judge has disposed of the anticipatory bail application of the petitioner since only summons were issued, but subsequently, non-bailable warrant of arrest has also been issued against the petitioner, statement to that effect has been made in para 3 of the petition which reads as follows:-

“That on the compliance of Hon’ble Court’s order supplementary affidavit is being filed and stating by instruction of my client that for the present case non-bailable warrant has been issued against this petitioner...”

It is further submitted that the petitioner admits his marriage with the complainant. Though, the petitioner is ready to keep the complainant as wife with full dignity and honour but the complainant has performed second marriage and she is not ready to live with the petitioner, statement to that effect has been made in para 9 of the petition which reads as follows:-

“That it is relevant to state here that the petitioner is husband and he is ready to keep his wife (Opp. No.2) but she has solemnized second marriage with another boy namely Arun Mahton and she is not ready to live with her husband.”

On the above submission initially notices were issued to the complainant opposite party no.2 vide order dated 09.08.2016. and, thereafter, vide order dated 22.11.2016 fresh notices were directed to be issued to the complainant opposite



party no.2. The office note dated 02.03.2017 reflects that ordinary process of notice has been served on opposite party no.2. But in spite of valid service of notice none is appearing on behalf of the complainant opposite party no.2. The petitioner has brought on record the certificate of the Panchayat Samiti Member, as contained in annexure-2 to the application, to the effect that the complainant has performed second marriage with one Arun Mahto, son of Ramdeo Mahto, with whom she is residing at present.

Considering the nature of accusation and in spite of valid service of notice the complainant chose not to appear or controvert the contention of learned counsel for the petitioner, let the above named petitioner be released on anticipatory bail, in the event of arrest or surrender before the learned Court below within a period of 12 weeks from today, on furnishing bail bond of ₹10,000/- (ten thousand) with two sureties of the like amount each to the satisfaction of the learned SDJM, Begusarai, in connection with Complaint Case No.1321C/2012, subject to the conditions as laid down under Section 438(2) Cr.P.C.

(Dinesh Kumar Singh, J)

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