

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.24567 of 2017

Arising Out of PS. Case No.-12 Year-2017 Thana- MAHILA P.S. District- Purnia

Chandan Kumar, S/o Late Basuki Nath Jha, resident of Sipahi Tola, Chunapur Road, P.S.- K. Hat (Madhubani), District- Purnea.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Abha Jha, W/o Chandan Kumar, D/o Anil Kumar Jha, resident of Sipahi Tola, P.S.- K. Hat, District- Purnea, presently residing at Bhairahwa, Ward No.3, Khajana, District- Rupandehi (Nepal).

... .. Opposite Party/s

Appearance :

For the Petitioner	:	Mr. N.K. Agarwal, Sr. Advocate Mr. Mayank Shekhar, Advocate
For the State	:	Mr. Pranav Kumar, APP
For opposite party No.2	:	Mr. Uma Shankar Prasad, Sr. Advocate Mr. K. K. Tiwari, Advocate

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
ORAL ORDER

7 01-08-2018 Heard learned counsel for the petitioner, learned APP
for the State and learned counsel for the opposite party No.2.

The petitioner is apprehending his arrest in a case registered under Sections 323, 341, 307, 504, 498A read with 34 of the Indian Penal Code and $\frac{3}{4}$ of Dowry Prohibition Act and $\frac{3}{4}$ of Domestic Violence Act, 2005.

The matter was earlier adjourned as to explore the possibility for reconciliation or one time settlement between the parties.

When the matter is taken up today, it has been submitted on behalf of the parties that no reconciliation or one time settlement could be arrived between the parties.



It has been submitted on behalf of the petitioner that there is no allegation of tampering of evidence or witnesses by the petitioner. The petitioner has falsely been implicated in the present case on the basis of false and concocted allegation. On the earlier occasion also, a case was instituted by the informant for the similar offences against the petitioner and his family members i.e. on 01.09.2016, which is Annexure-2 to the present application. In the said case, the petitioner surrendered in the court below and he was taken into judicial custody. The petitioner was released on bail with undertaking that he is ready to keep the informant (his wife) with all respect and dignity. In pursuance of the assurance given by the petitioner, the informant came to the house of the petitioner on 07.01.2017 and thereafter a second case, i.e. the present case, for similar offence was instituted by the informant on 17.03.2017 alleging the date of occurrence to be 10.01.2017, which is evident from Annexure 1 itself. The delay in instituting the F.I.R. has not been explained by the prosecution, as to when the date of occurrence is 10.01.2017 and the instant F.I.R. has been instituted on 17.03.2017. The petitioner preferred an application for judicial separation before the Family Court, Purnea on 18.01.2017, which much prior to institution of the present prosecution. The



present case is an afterthought and to create a defence in the case of judicial separation pending in the Family Court, Purnea. As such, subsequently the informant as to make her case of graver nature made an allegation of commission of rape by the family members of the petitioner in her statement recorded under Section 164 Cr.P.C. after six months of the alleged occurrence. The said statement of the informant under Section 164 Cr.P.C. was recorded on 10.07.2017, which is Annexure A to the counter affidavit. The said allegation of rape does not find place specifically in the first prosecution version nor in the complaint made to the Officers of the Indian Embassy, which is evident from Annexure C to the counter affidavit. The said allegation was an afterthought only to make the offence graver. The medical reports of the informant annexed the counter affidavit do not give any conclusive finding in respect of the commission of offence under Section 307 I.P.C. Except for offence under Section 307 I.P.C., rest of the offences are triable by the Magistrate. It has been further submitted that the matter relates to matrimonial dispute, in respect of which two cases have been instituted one after the other. The petitioner has relied upon the judgment of this Court in the case of Md. Naimul Haque Ansari @ Naimul Haque Ansari & Ors. Vs. The State of Bihar, reported



in 2006(3) PLJR 182.

On behalf of the State and the learned counsel for the opposite party No.2, it is submitted that the petitioner is named in the F.I.R. He is the husband of the informant. Specific allegations have been made in the F.I.R. The reason for delay has also been explained as the police did not co-operate in instituting the F.I.R. The informant was also examined by the doctor in respect of ill-treatment made on her by the petitioner and his family members.

The matter relates to a matrimonial dispute and after opportunity being given to the parties for reconciliation or one time settlement, but same has not been made. The instant prosecution does not relate with commission of rape upon the informant.

Let the petitioner, above named, in the event of arrest/surrender before the learned court below within a period of six weeks from today, be released on anticipatory bail on furnishing bail bonds of Rs.10,000/- (Ten thousand) with two sureties of the like amount each to the satisfaction of learned Chief Judicial Magistrate, Purnea in connection with Purnea Mahila P.S. case No.12 of 2017, subject to the conditions as laid down under Section 438(2) of the Code of Criminal Procedure.



If so advised, either of the parties will be at liberty to make an application before the Court below for referring the matter to the District Mediation Centre for the purpose of reconciliation or one time settlement.

Narendra/-

(Sudhir Singh, J)

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