

**IN THE HIGH COURT OF JUDICATURE AT PATNA
(FROM RESIDENTIAL OFFICE VIA VIDEO APPLICATION)
CRIMINAL MISCELLANEOUS No.14424 of 2020**

Arising Out of PS. Case No.-821 Year-2018 Thana- PATNA COMPLAINT CASE District-
Patna

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1. SUNIL CHAUHAN Son of Late Chamru Chouhan Resident of Village- Saidpur, P.O.- Atanawan, P.S.- Barh, District- Patna.
 2. Arun Chauhan Son of Late Chamru Chauhan Resident of Saidpur, P.O.- Atanawan, P.S.- Barh, District- Patna.
- Petitioners

Versus

1. The State of Bihar
 2. Sunila Devi Wife of Shri Kapil Chouhan Resident of Village- Saidpur, P.O.- Atanawan, P.S.- Barh, District- Patna. At present residing at D/o Narayan Chauhan, Village- Dammarbigaha, P.S.- Manpur, District- Nalanda.
- Opposite Party

Appearance :

For the Petitioner/s : Mr.Abhay Shanker, Advocate
For the Opposite Party/s : Mr.Akhileshwar Dayal, APP

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER**

5 16-12-2020 Heard learned counsel for the petitioners, learned counsel for the complainant – opposite party no. 2 and Mr. Akhileshwar Dayal, learned APP for the State.

The two petitioners in the present case are own Devars (younger brothers of the husband) of the complainant – opposite party no. 2, they are seeking pre-arrest bail in connection with Complaint Case No. 821(C) of 2018 registered for the offences punishable under Sections 323, 354, 379/34 of the Indian Penal Code.

Learned counsel for the petitioners submits that the complaint petition (Annexure ‘1’) was preferred by opposite party



no. 2 on 13.12.2018 in respect of the alleged occurrence of 11.12.2018. In the complaint petition, it is alleged that while the complainant – opposite party no. 2 was sleeping in her house, at about 10:00 P.M. these two petitioners entered inside the house with bad intention and started pressing the part of the body of the complainant whereupon the complainant awoke and at this stage while she shouted and pushed the accused, one of hem started abusing the complainant, caught hold of her, put her down and attempted to commit rape on her which resulted in tearing of the blouse of the complainant. It is alleged that one of the accused (petitioner no. 2) had taken away some gold ornaments. It is alleged that about two months back also the accused persons had indulged in the same kind of occurrence which were unsuccessful.

Learned counsel for the petitioners submits that the entire allegations in the complaint petition are false, concocted and baseless and this fact would be apparent from a bare perusal of the written complaint submitted by the mother-in-law of the complainant on 13.12.2018 to the Officer – in – Charge of Bar Police Station in which she had made allegation that on 10.12.2018 her daughter-in-law Sunila Devi (this complainant) had come to the village along with her brothers and father and then they had taken away the header of the Hand-pump and they had also put a lock on the joint family house when her two other sons



were outside the house. She also alleged that she was assaulted by them. A copy of this complaint was sent to the Officer-in-Charge by post on 13.12.2018.

Learned counsel submits that a preliminary inquiry was held by a Sub-Inspector of Police in connection with the complaint made by the mother-in-law of the complainant – opposite party no. 2 and the inquiry report dated 15.03.2019 (Annexure ‘6’). Learned counsel submits that the date in the bottom of Annexure ‘6’ seems to have been wrongly typed as 15.03.2016 but the diary number entered in the left hand margin of Annexure ‘6’ is DR/490/19. It is submitted that from Annexure ‘6’ it will appear that in preliminary inquiry it was revealed that this complainant – opposite party no. 2 was living somewhere else and none of the villagers were aware about the place of her stay and living. It has also come in the inquiry report that she was a quarrelsome lady and her father and brothers were threatening these petitioners on account of the property disputes as they were claiming the entire property for the complainant – opposite party no. 2.

Learned counsel submits that with regard to the property disputes Title Suits are also pending and it is only because of the said property dispute the complainant – opposite party no. 2 has falsely implicated these two petitioners.

It is then submitted that there is no independent witness



of the alleged occurrence and it is highly improbable that such kind of occurrence will not be known to the local villagers and it is one of the submissions of learned counsel for the petitioners that although in the complaint petition the complainant – opposite party no. 2 has made an ornamental statement that she had given a telephonic information of the occurrence to her husband and then he had gone to the Police Station but these are only ornamental allegations and prior to filing of the complaint petition, the occurrence was never reported to the Police Station.

It is submitted that in such circumstance in view of the judicial pronouncement of Hon'ble Supreme Court in the case of **Mrs. Priyanka Srivastava & Anr. Vs. The State of U.P. & Ors.** reported in **AIR 2015 SC 1758**, complaint petition itself was not fit to be entertained.

On the other hand, learned counsel for opposite party no. 2 has opposed the prayer for pre-arrest bail of the petitioners. It is submitted that these petitioners have indulged in the alleged occurrence and a *prima-facie* case has been found by the learned Magistrate.

Learned A.P.P. for the State has also endorsed the submission of learned counsel for the complainant – opposite party no. 2.

Having regard to the facts and circumstances of the



case, in the nature of dispute and the fact that a private complaint was lodged with respect to the alleged occurrence but at the same time the mother-in-law of the complainant – opposite party no. 2 had submitted a complaint with the Officer-in-Charge of the Police Station giving the alleged occurrence which had taken place on 10.12.2018 and according to which the complainant – opposite party no. 2 had a quarrel with the family when she had visited the village of these petitioners and she had then left the place and further material in form of inquiry report (Annexure ‘6’), there being no material to show that the alleged occurrence was ever reported to the Police Station prior to filing of the private complaint case, this Court directs that the petitioners above-named in the event of their arrest or surrender within a period of four weeks from today in connection with Complaint Case No. 821(C) of 2018 be released on bail on furnishing of bail bonds of Rs. 25,000/- (twenty five thousand) each with two sureties of the like amount each to the satisfaction of learned Additional Chief Judicial Magistrate – IV, Barh, Patna, subject to the conditions as laid down under Section 438 (2) of the Cr.P.C. i.e.

(i) a condition that the person shall make himself available for interrogation by a police officer as and when required;

(ii) a condition that the person shall not, directly or



indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;

(iii) a condition that the person shall not leave India without the previous permission of the Court.

And further condition that the court below shall verify the criminal antecedent of the petitioners and in case at any stage it is found that the petitioners have concealed their criminal antecedent, the court below shall take step for cancellation of bail bond of the petitioners.

(Rajeev Ranjan Prasad, J)

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Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.

