

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.11001 of 2021**

Arising Out of PS. Case No.-56 Year-2019 Thana- MAHILA P.S. District- Samastipur

MANTRESHWAR @ MANTESHWAR S/o Ashutosh Kumar Resident of Mohalla- Babu Saheb Colony, Laheriasarai, P.S.- Laheriasarai, District- Darbhanga, at present Flat No. 2C, Kanchanjunga Apartment, Sector-53, Noida, P.S.- Noida Sector 20, District- Noida (U.P.).

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. N. K. Agrawal, Sr. advocate M/s. Sanjeet Kumar & Preety Kunwar
For the Opposite Party/s	:	Mr. Murari Narayan Choudhary Mr. Nawal Kishore Prasad

**CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL ORDER**

7 26-07-2021 Heard learned senior counsel for the petitioner and the learned counsel for the opposite parties.

The present application has been filed for quashing the order dated 17.12.2020 passed by Judicial Magistrate, 1st class, Samastipur in Mahila PS case No. 56/2019 whereby the application filed by the petitioner for grant of permission to go abroad as the petitioner is working in P.T. Fashnear Technology, Indonesia on the post of Senior Category and Operation Manager, has been rejected.

It is submitted that marriage of the petitioner was solemnized on 23.04.2017 with Anuthi Priya. After few years the relation between the petitioner and his wife got strained as a



result of which Anuthi Priya, wife of the petitioner, lodged a case before the police on 22.08.2019 u/s 498A of the IPC and u/s 3/4 of Dowry Prohibition Act against the petitioner and others. It is further submitted that petitioner was working as Full Time Senior Category and Operation Manager in P.T. Fashnear Technology, Indonesia and was posted at Jakarta at the time of filing of the FIR. It is submitted that petitioner after filing of the aforesaid FIR moved this court by filing Cr. Misc. No. 76564 of 2019 for grant of anticipatory bail and the same was allowed by this court on 09.06.2020 (Annexure- 2) but in view of condition as laid down under Section 438(2) (iii) of the Code of Criminal Procedure previous permission is required to go abroad. The petitioner filed petition on 03.10. 2020 for grant of permission to go abroad u/s 438(2) (III) of the Code of Criminal Procedure but the same was rejected on the ground that cognizance has not been taken and charges have also not been framed. It is further submitted that if the permission to go abroad is not granted to the petitioner the same would deprive the petitioner of his right of livelihood.

Learned counsel for the opposite party opposed the prayer and submitted that petitioner is not working in abroad and on the basis of forged and fabricated documents he is



misleading this court. The petitioner is prime accused in Mahila (Samastipur) PS case No. 56/2019 and cognizance has already been taken on 23.03.2021. The petitioner is also accused in Matrimonial Case No. 70/2021 in which after admission notice has been issued to the petitioner. The petitioner also filed Matrimonial Case No. 149/2020 on 16.10.2020 for divorce and in the aforesaid circumstances, it would not be proper and in the interest of justice to grant permission to the petitioner to go abroad. The whole object of petitioner is to delay and prolong the trial. Once he is granted permission, it would be very cumbersome to procure his appearance in this case.

Taking into consideration the facts of the case and the rival submissions of the parties, this court is of the opinion that at this stage it would not be proper to give permission to the petitioner to go abroad and the impugned order does not suffer from any illegality. Primary concern of the court is to ensure fair and speedy trial. In such a situation, court has to strike a balance between liberty of accused on the one hand and interest of society in ensuring fair and speedy trial on the other hand. However, in the interest of justice, it is observed that once charge is framed the petitioner shall be free to go abroad on the condition that he will file an undertaking in the court below that



he shall appear in the court as and when required by the court.
The petitioner will also file an undertaking that he shall engage a lawyer on his behalf to appear on each and every date fixed in the case. The petitioner shall not object to the recording of evidence and no adjournment shall be asked on his behalf and shall be present in court as and when so required.

In the aforesaid facts and circumstances, the court below is directed to frame charges in the case within two months from the date of receipt of this order.

With the aforesaid observation/ direction, this petition is disposed of.

(Prabhat Kumar Singh, J)

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