

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL MISCELLANEOUS No. 25361 of 2020**

Arising Out of PS. Case No.-25 Year-2020 Thana- RUPAULI District- Purnia

Manish Kumar Jaiswal @ Manish Jaiswal, aged about 36 years, Male Son of Mahendra Jaiswal, Resident of Mohalla- Birauli Bazar, PS- Rupauli, District- Purnea.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

**Appearance :**

|                      |   |                                                                       |
|----------------------|---|-----------------------------------------------------------------------|
| For the Petitioner/s | : | Mr. Ajay Kumar Thakur, Advocate with<br>Ms. Vaishnavi Singh, Advocate |
| For the State        | : | Mr. Jharkhandi Upadhyay, APP                                          |

**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH**  
**ORAL JUDGMENT**

**Date : 29-07-2021**

The matter has been heard *via* video conferencing.

2. Heard Mr. Ajay Kumar Thakur, learned counsel along with Ms. Vaishnavi Singh, learned counsel for the petitioner and Mr. Jharkhandi Upadhyay, learned Additional Public Prosecutor (hereinafter referred to as the ‘APP’) for the State.

3. The petitioner apprehends arrest in connection with Rupauli PS Case No. 25 of 2020 dated 02.03.2020, instituted under Sections 341, 323, 324, 498-A, 504/34 of the Indian Penal Code.

4. The petitioner is husband of the sister of the informant and he along with his parents and elder brother is alleged to have assaulted his wife.



5. Learned counsel for the petitioner submitted that the sister of the informant, who is wife of the petitioner, is not satisfied with the matrimonial life in the sense that initially she did not want to live in the joint family due to which the parents and elder brother of the petitioner moved to another house and in the old ancestral house the petitioner along with his wife were living and when the mother of the petitioner had come to visit him once, she was assaulted and when the petitioner tried to intervene, he was assaulted with blade. It was submitted that this false case has been registered to camouflage the said incident.

6. However, on 04.11.2020, in view of a categorical stand taken on behalf of the petitioner that he is ready to keep his wife if she is ready to live in a decent and peaceful manner, the Court had issued notice to her and had also granted interim protection to the petitioner. Unfortunately, on subsequent dates, the petitioner had resiled from the stand and took the stand that he was not in a position to keep her with him and that he was amenable to only a one-time settlement. Since, despite service of notice when the wife of the petitioner did not appear, the Court had called upon learned APP, who was in touch with the wife of the petitioner, to elicit her view and she had stated that even a few days back, she along with the other respected citizens had gone to



the house of the petitioner and she had pleaded for being taken back but the petitioner flatly refused to do so.

7. Learned counsel for the petitioner submitted that his mother was attacked by the sister of the wife of the petitioner when she had come to meet the petitioner where they were living in a separate house and, thus, the petitioner is not willing to take her back as his wife. It was further submitted that the offence under Section 498A of the Indian Penal Code is not made out as there has been no torture or demand of dowry by the petitioner and rather, it is the wife of the petitioner who has been torturing the petitioner and had also made him live separately from his parents.

8. Learned APP submitted that the petitioner by misrepresentation had got interim protection but later on having become emboldened had shown his true colour by not being ready to keep his wife with him. It was submitted that the most unfortunate part is that there is a minor son born out of the wedlock and still the petitioner is bent upon destroying the life of both the wife of the petitioner, who has no other place to go as well as his minor son.

9. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court



would take note of the stand taken by the petitioner in the present pleadings filed by him. In the main petition, the following has been stated at paragraphs no. 10, 11, 12 and 13.

*“10. That the matter was sent to the mediation centre of this Hon’ble Court and it was agreed that family member of both the parties will not interfere in the relation of petitioner and the sister of the informant.*

*11. That the petitioner’s family has got two houses one is situated in mohalla Barauli Bazar whereas another house is situated at Maveshi chowk at Barauli Bazar Main Road.*

*12. That after the said settlement the petitioner started residing with the sister of the present informant in his Barauli Bazar house whereas the brother and parent of the petitioner are residing in newly constructed house situated at a distance of 500 meters from the old house.*

*13. That the family member of the present informant again started interfering in the marital life of the petitioner and on 1.3.2020 when the mother of the petitioner came to see him the sister of the present informant started quarrelling and she assaulted petitioner with blade in stomach as a result of which petitioner lodged information to Rupauli Police Station as a result to which Station Diary Entry no. 26/20 dated 2.3.2020 was instituted by Rupauli police station and petitioner was examined at Referral Hospital Rupauli.”*

10. From the aforesaid, it is clear that the stand of the petitioner is self-contradictory inasmuch as, he himself has stated that in mediation, it was agreed that the family members of both the parties will not interfere in the relationship of the petitioner and the wife of the petitioner and then it is stated that the petitioner and his wife started living in a different house about 500



meters away from the old house where his parents and brother resided. However, thereafter, it has been stated that the mother of the petitioner came to his house to meet him where an incident is said to have taken place and she was assaulted. The Court is surprised at such contradictory stand being taken. Moreover, this exposes the hollowness of the stand taken on behalf of the petitioner. Once, as per his own stand that he was living in a separate house with his wife and it was agreed that the family members of both the parties would not interfere, there was no occasion for the mother of the petitioner to come to his house, more so, as she was living just 500 meters away, and if the petitioner wanted to meet her, he should have gone to her place, but the mother coming to the house where the petitioner and his wife live, despite the fact that the family members of both the sides were not to interfere, clearly shows that the incident, if at all happened, was called upon by the petitioner and the mother themselves, as there was no reason or justification for her to visit the house where the petitioner and his wife lived in the background that there was already tension and that is why it was agreed that the family members of both the sides would not interfere. Further, the Court notices, as has also been submitted by learned APP, that despite a categorical stand being taken on behalf



of the petitioner that he was ready to keep his wife, and on such plea, the Court having granted him interim protection, the stand now is that he would not keep her and is ready only for a one-time settlement, is clearly lacking *bona fide*.

11. The Court, at this juncture, would also take note of what has been stated in the petition at paragraph no. 8, where the following statement has been made:

*“8. That it appears that the sister of the present informant from very beginning was not liking the present marriage and the said marriage was performed in the years 2016, i.e. 13.07.2016 and the sister of the present informant in the year 2018 lodged a case against the petitioner and others giving rise to Mahila PS Case No. 50/2018 under sections 498A and other sections of the Indian Penal Code and section 3/4 of the Dowry Prohibition Act.”*

12. From the aforesaid, it is clear that the stand being taken is that right from the beginning, the wife of the petitioner was not liking the present marriage but there is no explanation as to how a son was born when his wife was not happy with the marriage. Further, there could have been no reason for her to insist to live with the petitioner if that was the case, but the subsequent developments especially during the pendency of this petition, goes to show that the adamant attitude of the petitioner is the main cause for lack of reconciliation between the parties despite the wife of the petitioner having totally surrendered. The Court can



understand the predicament of the wife of the petitioner where a young girl having a minor son, may not have any future, much less of having a married life, in the present day social scenario.

13. Be that as it may, having considered the issue from an overall perspective, the Court finds that the allegations made against the petitioner in the FIR cannot be said to be false and brushed aside. The subsequent conduct of the petitioner, especially in the present proceeding also indicates that the allegations may not be misplaced. However, the same has to be decided by the Court below at the appropriate stage after the parties having full opportunity to present their case.

14. For reasons aforesaid, the Court is not inclined to grant pre-arrest bail to the petitioner.

15. Accordingly, the petition stands dismissed.

16. Interim protection granted to the petitioner under order dated 04.11.2020, stands vacated.

**(Ahsanuddin Amanullah, J.)**

P. Kumar

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