

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.34528 of 2020**

Arising Out of PS. Case No.-80 Year-2020 Thana- MOJAHIDPUR District- Bhagalpur

Gaurav Kumar, aged about 31 years, Male, son of Late Vinay Kumar Yadav, resident of Village and Post Office - Shankarpur, Police Station- Muffasil, District- Munger. Presently posted at Military Hospital, Gaya, Police Station- Sherghati, District- Gaya.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Sarita Bharti, aged about 26 years, wife of Gaurav Kumar and daughter of Nandan Singh Yadav, resident of Mohalla - Shailbagh, Aliganj, Post Office- Aliganj, Police Station - Babarganj, District- Bhagalpur - 812005

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Rajendra Narain, Senior Advocate with Mr. Alok Ranjan, Advocate
For the State	:	Mr. Md. Arif, APP
For the OP No. 2	:	Mr. Praveen Kumar, Advocate

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

Date : 21-05-2021

The matter has been heard *via* video conferencing.

2. Heard Mr. Rajendra Narain, learned senior counsel along with Mr. Alok Ranjan, learned counsel for the petitioner; Mr. Md. Arif, learned Additional Public Prosecutor (hereinafter referred to as the ‘APP’) for the State and Mr. Praveen Kumar, learned counsel for the informant.

3. The petitioner apprehends arrest in connection with Mojahidpur (Babarganj) PS Case No. 80 of 2020 dated 21.03.2020, instituted under Sections 498-A, 406/34 of the Indian Penal Code and 3/4 of the Dowry Prohibition Act, 1961.



4. The opposite party no. 2, who is the informant of the case and wife of the petitioner, has alleged that her marriage took place when the petitioner was pursuing study of MBBS and in the marriage, rupees twenty two lakhs cash was given besides gift of rupees four lakhs. It is further alleged that on persistent demand and pressure from the petitioner, Rs.14,24,600/- was transferred in the account of the petitioner in the name of expenses. Thereafter, in the year 2016, he completed his MBBS course and in the meantime, she was blessed with a girl child on 07.03.2014. It is alleged that the petitioner was employed in Indian Army on 01.06.2016 and he started pressurizing the informant for purchasing two Kathas of land due to which the father of the informant transferred two Kathas of land, but in the name of the informant. Thereafter, it is said that in October, 2019, the petitioner was transferred to Military Hospital, Gaya, and on 03.10.2019, she along with her daughter had gone to Gaya and lived there in the residence allotted to the petitioner, but on 06.10.2019, she was assaulted and driven out of the house and it is alleged that the petitioner has relationship with another boy and he had told her that only for the purpose of meeting the expenses during studies, he has married the opposite party no. 2. It is alleged that on the occasion of *Chhath*,



the mother, the sister and the brother of the petitioner started torturing her that remaining two Kathas of land be also transferred by the father and further demand of money was made due to which Rs. 1, 20,000/- was transferred in the account of the petitioner on 6th, 7th and 8th of November, 2019. It is further alleged that when she went on 13.01.2020, to the Commanding Officer with her father and daughter to complain, the petitioner agreed to keep her and on 14.01.2020 had taken them to his residence and the father of the informant along with her daughter returned to Bhagalpur, but the petitioner is alleged not to have maintained any conjugal relationship and, in fact, it is alleged that he used to sleep with Dr. Pradeep and had taken her mobile phone so that he could not talk anywhere and on 02.02.2020, she was sent to Bhagalpur by train. It is said that again, after the examination of the daughter was over, she had gone to Gaya on 19.02.2020. It has further been stated that on 20.02.2020, when the father of the informant went to update her Pass Book of UCO Bank, he found that the balance was nil even though she had Rs. 7,46,669/- in the account and then it transpired that the petitioner had got the amount transferred in his three accounts. It has been stated that when she confronted the petitioner, initially, he denied but later assured her that he



would return the money and the petitioner is said to have called his mother on 29.02.2020 and took the informant to his native village on the pretext that he has taken one month's leave and would come there and return the money. It is alleged that on 20.02.2020, the mother of the petitioner, after assaulting and abusing her and taking her jewellery had forcibly made the informant to go Aliganj on a motorcycle with the nephew of the mother of the petitioner. Finally, it has been alleged that the petitioner was living in Gurgaon (Haryana) in his house where he has also married another lady. Accordingly, prayer has been made for seeking appropriate legal action in the matter resulting in institution of the FIR.

5. Learned counsel for the petitioner submitted that the dispute is only because of the attitude of the informant as she is a Government Teacher at Bhagalpur and does not want to live at the place where the petitioner is posted. It was submitted that the petitioner is ever ready to keep her with him, but the informant herself is not ready for the same. It was submitted that the allegation with regard to taking of money, the same was much prior to the lodging of the FIR, and whatever transaction took place between the couple and the family is a matter of the past. It was submitted that the immediate reason for lodging of



the FIR was the matrimonial case filed by the petitioner before the Principal Judge, Family Court at Gaya, under Section 9 of the Hindu Marriage Act, 1955, for restitution of conjugal rights and upon notice in the same, she has lodged the present case. It was further submitted that the brother and the father of the informant are instrumental in not allowing her to continue good relationship with the petitioner. Summing up his arguments, he submitted that the petitioner denies any demand of dowry or cash or assault alleged against him by the informant.

6. Learned counsel for the informant submitted that the petitioner stands exposed, inasmuch as, all the allegations made in the FIR are documentarily substantiated. It was submitted that the amount of over rupees fourteen lakhs, rupees one lakh twenty thousand and about rupees seven and a half lakhs were transferred into the account of the petitioner from the account of either of the informant or her father, which are corroborated by bank statements. It was further submitted that the informant had not once, but on a number of occasions made serious attempt and she had gone to live with the petitioner at the place of his posting, but due to conduct of the petitioner had to return. It was further submitted that the denial of demand of dowry and torture, as submitted by learned counsel for the



petitioner, has been belied by the fact that there is no denial of the fact that such huge amounts were transferred and taken by the petitioner, for which there is no explanation. It was submitted that there was no occasion that after marriage such heavy amounts would be transferred into the account of the petitioner by the informant or her father. It was further submitted that even before the Commanding Officer of the Military Hospital, Gaya, the petitioner had undertaken to keep the informant with him, which clearly shows that he was in the wrong and he had not made any counter allegation against the petitioner and, now, before the Court taking such stand is also an attempt to mislead the Court by giving a totally wrong impression. Learned counsel submitted that as far as the stand taken on behalf of the petitioner that he is ready to keep the informant, the same are only hollow words since, in the past she had made repeated efforts, but the attitude of the petitioner and his family members coupled with maltreatment and unending greed for money made her to take the decision that she and her daughter would never be happy going back to the petitioner as never in the past any genuine attempt has been made to make the informant feel that she is the wife or her due place in his life and in the family members of the petitioner has been given to



her. Further, learned counsel submitted that though copy of the restitution petition has not been annexed in the application or the supplementary affidavit filed in the present case, but in the case for the restitution of conjugal rights, the same was required to be filed at Bhagalpur where the informant is residing, but it was filed at Gaya only to harass her and most importantly, the address given of the informant in the restitution petition was that of District Banka, which is the old ancestral village of the informant in which nobody lives for the last over twenty years, which was well known to the petitioner and, thus, only to create a record by way of formality and on professional advice, restitution case has been filed so as to create a defence, as the petitioner was well aware that things have reached the stage when the informant will take stringent steps. It was further stated that during the period when the informant was living in the house of the petitioner, between 15.01.2020 to 02.02.2020, at Gaya with the petitioner and he had taken her mobile and from the same phone transfer of Rs. 7,46,449/- was made and the record in the mobile was deleted so that the informant could not be aware and only later, when the father of the informant had gone to the Bank to update the Pass Book, it transpired that such amount has been transferred in three different accounts in



the name of the petitioner, during the said period.

7. At this juncture, when the Court called upon learned counsel for the petitioner to explain the circumstances under which such huge amounts were transferred into the account of the petitioner after marriage, he frankly submitted that he cannot explain.

8. Learned APP submitted that the allegations in the FIR are very natural and supported by documentary evidence which the petitioner cannot explain and furthermore, no girl having a daughter, in the present society, has any real option other than to reconcile and live with the father of her daughter, and still the informant being bold enough to lodge the FIR, clearly indicates correctness of the allegation and the conduct of the petitioner. He submitted that generally the Courts are liberal with regard to matrimonial affairs, but once the complicity and role of the husband is documentarily shown to be wanting and conduct of greediness by periodically getting huge amounts transferred in his account clearly brings home the allegation under Section 498-A of the Indian Penal Code.

9. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court is not persuaded to grant pre-arrest bail to the petitioner.



10. Accordingly, the application stands dismissed.

11. The interim protection given to the petitioner under order dated 13.04.2021 stands vacated.

(Ahsanuddin Amanullah, J)

J. Alam/-

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