

**IN THE HIGH COURT OF JUDICATURE AT PATNA
(FROM RESIDENTIAL OFFICE VIA VIDEO APPLICATION)
CRIMINAL MISCELLANEOUS No.42533 of 2019**

Arising Out of PS. Case No.-856 Year-2018 Thana- KOTWALI District- Patna

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AWADH KISHORE TIWARY @ AWADHESH TIWARY Son of Late Jai Shankar Tiwary Resident of Village- Barwat Prasrain, P.S.- Bettiah (M), District- West Champaran.

... .. Petitioner

Versus

THE STATE OF BIHAR

... .. Opposite Party

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Appearance :

For the Petitioner/s : Mr.Bimlesh Kumar Pandey, Advocate

For the Opposite Party/s : Mr.Ram Sumiran Rai, APP

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

5 18-08-2021 Heard learned counsel for the petitioner and Mr. Ram Sumiran Rai, learned APP for the State.

Petitioner in the present case is seeking pre-arrest bail in connection with Kotwali P.S. Case No. 856 of 2018 registered for the offences punishable under Section 193, 196, 198, 418, 419, 420, 120 (B) of Indian Penal Code.

The present case has been lodged on the direction of this Court as contained in the order dated 06.10.2018 passed in Criminal Miscellaneous No. 31291 of 2018. In fact the said criminal miscellaneous case was filed by this petitioner with a prayer to quash the order dated 13.12.2017 passed by learned Additional District and Sessions Judge I-cum-Spl. Judge Bettiah, West Champaran in connection with Muffasil P.S. Case

No. 492 of 2017 registered under Section 366(A) of the Indian Penal Code read with Section 4 of the POCSO Act.

Before this Court the petitioner claimed that the victim girl is his daughter-in-law and in her statement under Section 164 Cr.P.C. she has stated specifically that she wanted to stay with her in-laws. The petitioner claimed that the date of birth of the victim girl is that of the year 1998 whereas the informant in the said case claimed that the victim was minor as her date of birth was 01.01.2005 only.

While this Court was considering the case of the petitioner and the matter was fixed in Chambers on 6.10.2018, one lady appeared with the learned counsel who was representing O.P. No. 2 and made a revelation that the son of the petitioner was already married to her and they have got one daughter from the said wedlock. On hearing this, this Court took a view that the petitioner is prima facie guilty of suppressing the material fact from this Court while filing the present application.

This Court, therefore, directed for lodging an appropriate proceeding against the petitioner for suppression of material fact and thereby trying to mislead the Court for purpose of release. The said application being Cr. Misc. No. 31291 of 2018 was dismissed.

As a result of the aforesaid order, one FIR has been lodged against the petitioner giving rise to Kotwali P.S. Case No. 856 of 2018 registered under Sections 193, 196, 198, 418, 419, 420, 120(B).

Learned counsel for the petitioner submits that on perusal of the records of Cr. Misc. 31291 of 2018, this would appear that the petitioner had enclosed the statement of the victim girl under Section 164 Cr.P.C. In her statement she has mentioned about the fact that the son of the petitioner with whom she had solemnized court marriage was married to someone else and this fact was disclosed to her. The victim girl has further stated in her statement that her husband had told her about this fact that despite much persuasion his first wife is not staying with him.

Without going into the merit or evidentiary value of such statement of the victim girl in her 164 statement learned counsel submits that this much may be found from the records that the fact of first marriage of the son of the petitioner was available on the record and this was required to be incorporated in the petition but inadvertently as it appears now this particular fact was not mentioned, though the statement of the victim girl under Section 164 Cr.P.C. has been annexed as Annexure-2 to

the said application.

It is, thus, the submission of the learned counsel for the petitioner that the mistake in not incorporating the fact of first marriage despite that being available on the record in the 164 Cr.P.C. statement has led to the present situation.

Learned APP for the State is present and has opposed the prayer for anticipatory bail of the petitioner but at the same time it is not disputed that in the earlier application 164 Cr.P.C. statement of the victim girl was available on the record and the fact of first marriage is mentioned therein.

Considering the facts and circumstances of the case, the submission of learned counsel for the petitioner that the fact of first marriage was available on the record in the Statement under Section 164 Cr.P.C. but inadvertently it could not be incorporated in the petition, at this stage this Court is inclined to direct that the petitioner above-named in the event of his arrest or surrender within a period of four weeks from today in connection with Kotwali P.S. Case No. 856 of 2018 be released on bail on furnishing bail bonds of Rs. 25,000/- (twenty five thousand) with two sureties of the like amount each to the satisfaction of learned C.J.M., 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 petitioner and in case at any stage it is found that the petitioner has concealed his criminal antecedent, the court below shall take step for cancellation of bail bond of the petitioner. However, the acceptance of bail bonds in terms of the above-mentioned order shall not be delayed for purpose of or in the name of verification.

(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'.