

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.3210 of 2021

Arising Out of PS. Case No.-41 Year-2020 Thana- BARIYARPUR District- Munger

Kunal Kumar Suman @ Kunal Suman, aged about 30 years, (Male), S/o Sri Sumit Pd. Sah @ Suman Pd., Resident of Village - Ghorghat, P.S. - Bariarpur, Dist. - Munger.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Kalpana Nishad, D/o Shyamdeo Nishad, aged about 36 years, Occupation - Business, Resident at Room No. 87, Rubi House, Old C.S.T. Road, Kalina Santacruz (E) Mumbai - 29, Maharastra at present R/o Ghorghat, P.O. - Ghorghat, P.S. - Bariarpur, District - Munger.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Sadanand Paswan, Advocate
For the State	:	Mr. Kumar Ranjit Ranjan, APP\
For the State	:	Ms. Akanksha Malviya, Advocate

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 16-07-2021

The matter has been heard *via* video conferencing.

2. Heard Mr. Sadanand Paswan, learned counsel for the petitioner; Mr. Kumar Ranjit Ranjan, learned Additional Public Prosecutor (hereinafter referred to as the 'APP') for the State and Ms. Akanksha Malviya, learned counsel for the informant-opposite party no. 2.

3. The petitioner apprehends arrest in connection with Bariarpur PS Case No. 41 of 2020 dated 14.05.2020, instituted under Sections 498A and 379/34 of the Indian Penal Code.

4. The allegation against the petitioner and his



relatives/family members, in the case filed by the petitioner's wife-opposite party no. 2, is of torture and also taking away of her cash and jewellery and turning her out of the matrimonial home and also of threat to get the petitioner married somewhere else.

5. Learned counsel for the petitioner submitted that the opposite party no. 2 was a widow and had a son from the first marriage and they developed relationship at Mumbai living in the same neighbourhood. It was submitted that the opposite party no. 2, had filed a complaint at Mumbai also but the same was compromised and they married under the Special Marriages Act, but though the petitioner has been ever ready to accept the opposite party no. 2 as his wife, she has repeatedly not cooperated and in fact had tried to kill the petitioner for which he has filed Complaint Case No. 1146 of 2019, before the learned Chief Judicial Magistrate, Munger in which cognizance has been taken and process also issued against the informant and others on 02.03.2020 and after coming to know of the same, the present case has been filed on 14.05.2020. Learned counsel submitted that the opposite party no. 2 in the present case had also filed a compromise petition on 19.12.2020, but on the next date in the case before the Court below, she has prayed that the



said compromise be not acted upon and she has resiled from the same. It was submitted that she is living in the house of the petitioner and as the petitioner is presently jobless, being dependent on the pension of the father of the petitioner and even the parents of the petitioner are old and suffering from various ailments, but still the opposite party no. 2 is creating problems.

6. On 02.06.2021, the Court had granted interim protection to the petitioner and also given time to learned counsel appearing on behalf of the opposite party no. 2 to seek instructions. Thereafter, on 25.06.2021, learned counsel for the petitioner had taken a categorical stand that he was ready to keep the opposite party no. 2 and the child with him in his parents' house. The Court had also noted his stand that the opposite party no. 2 should also undertake that she would live properly with him and not create issues and problems as she was doing in the past, both with him as well as his parents. Thus, having regard to the common stand taken by the parties that both are ready to live with each other, the Court had asked them to file their individual affidavit with regard to their desire to live together and that they would not create any unnecessary issues or problems for each other and further that the petitioner shall keep the opposite party no. 2 and her child with him with full



dignity, honour and security.

7. In the affidavit filed on behalf of the petitioner, all sorts of allegations have been made against the opposite party no. 2 that she has various problems and that she had beaten the mother and father of the petitioner as also the petitioner due to which he has filed Complaint Case No. 470 of 2021 before the learned Chief Judicial Magistrate, Munger on 26.06.2021 and also Divorce Case No. 111 of 2021 under Section 13 of the Hindu Marriage Act, 1955 before the Principal Judge, Family Court, Munger.

8. Learned APP submitted that as per the FIR, offence is made out against the petitioner.

9. Learned counsel for the opposite party no. 2 submitted that the allegation of cruelty is apparent from what has been stated in the FIR. It was submitted that right from the beginning, the petitioner was trying to have a good time with the informant at Mumbai and even used to live with her in her house and had established physical relationship on the pretext that he would be marrying her but when he did not do so, she was forced to file a case and thereafter it was compromised and the parties married but the petitioner and his family members right from the beginning, wanted the relationship to end for



which the petitioner left his job and came back to live in the village, though there was no occasion for him to do so, but only to create a situation that the informant herself would leave him so that he would be free to marry another girl. Learned counsel submitted that the allegation of having tortured the petitioner and his parents in the matrimonial home is totally false as it cannot be expected that the informant, who is not a native of the place, would come and live in the house of the petitioner and would be so bold to commit such atrocities and most importantly, it also cannot be believed that the parents would not register a case and filing of the complaint itself shows that it is a false allegation. Further, it was submitted that it also cannot be believed that one lady would be so physically competent to assault and cause bodily injury, including biting, of three persons alone without any support. Even otherwise, it was submitted that from the photograph it is absolutely clear that only some marks have been shown but that also cannot prove any injury, rather only some marking made over some parts to show that there is some injury and the same also *ex facie* appears to be superfluous, only to create a record. It was submitted that the belligerence of the petitioner would be clear from the fact that he did not wait for the matter to be heard by



this Court and during the pendency, especially after getting interim protection, he has filed a divorce case when before the Court in the present proceeding, he was taking a stand that he was ready to keep the informant with him with full dignity, honour and security. It was submitted that the informant, who has a son from previous marriage, was not living in the house of the petitioner for long and still all sorts of allegations have been made against her, which shows that totally imaginary records have been created to show her in a bad light. It was further submitted that the allegations made by the informant in the FIR would clearly show that the same are very natural and real and there is no exaggeration for the reason that a husband leaving the wife and not keeping her with him itself is the biggest cruelty and definitely would come within the scope and ambit of Section 498A of the Indian Penal Code. It was further submitted that the *mala fide* on the part of the petitioner would be clear that he has tried to abuse the indulgence given by the Court and had tried to take undue advantage of giving an impression before the Court that he was ready to accept the informant as his wife and keep her with him with full dignity, honour and security, but having the real intention to somehow divorce her and after having got interim protection, he has shown his true



colours.

10. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds substance in the contention of learned APP and learned counsel for the informant.

11. In the tentative view of the Court, there appears to be sufficient ground to indicate that the allegations made in the FIR cannot be said to be incorrect or false. Moreover, the Court finds substance in the contention of learned counsel for the informant that once the petitioner had taken a stand before the Court that he was ready to keep the informant with him with full dignity, honour and security, due to which the Court was indulgent and gave him interim protection, he has, by hurriedly filing a suit for divorce, without even waiting for the present case to be taken up and raising his grievance before this Court, has taken precipitative action, more so, as his stand of keeping the informant with full dignity, honour and security has been totally belied by filing a Divorce Case straightaway. The Court would, thus, observe that the conduct of the petitioner in the present proceeding lacks *bona fides*.

12. In the aforesaid background, taking an overall view, the Court is not inclined to grant pre-arrest bail to the



petitioner.

13. Accordingly, the petition stands dismissed.

14. Interim protection granted to the petitioner under
order dated 02.06.2021 stands vacated.

(Ahsanuddin Amanullah, J)

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