

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.77876 of 2019

Arising Out of PS. Case No.-200 Year-2019 Thana- AAJAM NAGAR District- Katihar

Sarwar Alam, aged about 23 years (Gender-M), Son of Md. Fajlu Resident of Village - Gajhout, P.S.- Azam Nagar, District - Katihar.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Chain Banu, aged about 20 years, (Gender-F), Wife of Sarwar Alam, Daughter of Md. Wajid Alam, Resident of Village - Sirajmani, P.S.- Abadpur, District - Katihar.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Bimal Kumar, Advocate
For the State	:	Mr. Umeshanand Pandit, APP
For the State	:	Mr. Sanjeev Kumar Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 19-01-2021

Heard Mr. Bimal Kumar, learned counsel for the petitioner; Mr. Umeshanand Pandit, learned Additional Public Prosecutor (hereinafter referred to as the 'APP') for the State and Mr. Sanjeev Kumar Singh, learned counsel for the opposite party no. 2.

2. The petitioner apprehends arrest in connection with Falka Azam Nagar PS Case No. 200 of 2019 dated 03.08.2019, instituted under Sections 147/376/313/323/504/406 of the Indian Penal Code and 4 of the Dowry Prohibition Act, 1961.

3. The allegation against the petitioner, who is the husband of the opposite party no. 2, in the FIR which has been



instituted pursuant to a complaint filed having been referred to the police by the concerned learned CJM, is that prior to marriage the petitioner used to come to her house and they developed intimacy and she became pregnant and the same was got aborted and thereafter she was married on 02.05.2018. It has further been alleged that the father of the opposite party no. 2 and the father of the petitioner were partners in sale and purchase of wood. The further allegation is that two lakhs fifty thousand rupees was demanded after marriage and she was mentally and physically tortured and subsequently ousted from her matrimonial home and after 3-4 months a *panchayati* was held but they were adamant for the dowry.

4. Learned counsel for the petitioner submitted that they are simple people and the distance between the villages of the petitioner and the opposite party no. 2 is 16 kilometers and they had no prior touch with the family and by mediation of others the marriage was settled and on the same day the sister of the petitioner was also married. It was submitted that soon after marriage, the family members of the petitioner detected the pregnancy and took her to a doctor on 31.05.2018 where a seven months' old foetus was detected and ultrasound was also done, copy of which is on record by way of annexure. It was



submitted that when the family of the petitioner informed the father of the opposite party no. 2, he took her with him and said that they would decide later as to where the girl would be sent. Learned counsel submitted that the father of the petitioner had gone to the house of the opposite party no. 2 but they had not sent her with them on the pretext that they would be consulting the villagers and also that in the meantime they had got the fetus aborted. Learned counsel submitted that the investigation reveals that the prescription of the lady doctor is correct which reveals that on 31.05.2018 there was a seven months' old foetus, which is clear from the ultrasound report. Learned counsel submitted that the petitioner is a poor person doing embroidery work having no criminal antecedent.

5. Learned APP, from the case diary, submitted that though there is allegation against the petitioner and his other family members, but charge-sheet has been submitted only against the petitioner under Sections 498A and 494 of the Indian Penal Code and the investigation has revealed that the report of the doctor is genuine and the husband of the lady doctor concerned who is also a doctor has confirmed that what is written in the prescription is correct.

6. Learned counsel for the opposite party no. 2



submitted that though today she was called but she has missed the train and could not come before the Court.

7. Earlier by order dated 28.09.2020, the Court had required the petitioner as also the opposite party no. 2, along with their guardians, to be present. Today, only the petitioner and his father are present but the opposite party no. 2 is not present and, as has been informed by learned counsel for the opposite party no. 2, it is due to the fact that she has missed the train today.

8. Learned counsel for the opposite party no. 2 submitted that the petitioner was the person who was the father of the foetus which was aborted and further that he had married her knowing fully well that she was pregnant and also that they had got the foetus aborted. However, on a query of the Court as to how in the complaint/FIR it has been stated that the abortion was done prior to marriage, when, even three weeks after the marriage, a seven months' old foetus has been found by the doctor, which is also supported by ultrasound report, learned counsel could not give any reply to such query.

9. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, in the event of arrest or surrender before the Court below within



six weeks from today, the petitioner be released on bail upon furnishing bail bonds of Rs. 25,000/- (twenty five thousand) with two sureties of the like amount each to the satisfaction of the learned SDJM, Katihar in Azam Nagar PS Case No. 200 of 2019, subject to the conditions laid down in Section 438(2) of the Code of Criminal Procedure, 1973. Further, one of the bailors shall be a close relative of the petitioner. The petitioner shall cooperate with the Court. Failure to do so shall lead to cancellation of his bail bonds.

10. The application stands disposed off in the aforementioned terms.

(Ahsanuddin Amanullah, J)

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