

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 79094 of 2019

Arising Out of PS Case No.-42 Year-2019 Thana- MAHILA PS District- Buxar

Nitish Kumar Rai, aged about 29 years, Male, Son of Late Jhunnu Rai,
Resident of Village - Mohanpura, PS- Nonhara, District - Gajipur (UP).

... .. Petitioner/s

Versus

1. The State of Bihar
2. Anuradha Rai @ Anuradha Kumari, Daughter of Sri Shiv Prakash Narayan,
Wife of Nitish Kumar, Resident of Village - Mohanpura, PS- Nonhara,
District - Gajipur (UP) Presently residing at Sohan Patti (Jai Prakash Nagar)
Ward no. 33, PS- Town thana Buxar, District – Buxar.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Bishnu Kant Dubey, Advocate
For the State	:	Mr. Arun Kumar Pandey, APP
For the Opposite Party No. 2	:	Dr. Kamal Deo Sharma, Advocate

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH

ORAL JUDGMENT

Date : 08-02-2021

Heard Mr. Bishnu Kant Dubey, learned counsel for the
petitioner; Mr. Arun Kumar Pandey, learned Additional Public
Prosecutor (hereinafter referred to as the ‘APP’) for the State and
Dr. Kamal Deo Sharma, learned counsel for the opposite party no.
2.

2. The petitioner apprehends arrest in connection with
Buxar Mahila Thana Case No. 42 of 2019 dated 04.08.2019,
instituted under Sections 498A, 406/34 of the Indian Penal Code
and 3/4 of the Dowry Prohibition Act, 1961.

3. The Court initially had tried for Mediation but the
same had failed and finally on 19.01.2021, the petitioner and the
opposite party no. 2 and also her daughter and father had



appeared. Upon interacting with them, the Court had recorded that the petitioner appears to be under great stress. However, he created an impression before the Court that he was ready to give the relationship a chance. On that day, the Court had also recorded that the opposite party no. 2 had taken a categorical stand that there may have been some misgivings in her mind but now she was unconditionally ready to go and live with the petitioner and such stand was also taken before the Court by her father who was even ready to apologize for whatever mistake may have occurred either on his part or on the part of his daughter or his son.

4. The Court would record that on that day also, it was the demeanor and manner in which the opposite party no. 2 and her father had addressed the Court which made it clear that they were doing it as they wanted the relationship to be restored being in a position where they could not bargain and thus, had totally surrendered. The Court, to give some boost to the petitioner, had observed certain things in Court during such interaction.

5. Today also the Court has interacted with the parties. After detailed interaction, the Court has no hesitation to record that in the view of the Court, there appears to be serious lack of *bona fide* on the part of the petitioner. From whatever interaction the Court has had with him, it is clear that the petitioner does not



have a clean intention and further that all what he had stated before the Court and the dramatic manner in which he had tried to address the Court was only to get sympathy of the Court and nothing else. Thus, it became clear to the Court that its efforts to genuinely settle a matrimonial dispute, more so, in view of the fact that there was a minor girl daughter born out of the wedlock, such exercise would not bear any result primarily because of the conduct of the petitioner.

6. Be that as it may, as the Court is hearing an application on behalf of the petitioner only on the limited point as to whether he should be granted pre-arrest bail in the present case, the Court called upon learned counsel to address on merits.

7. The allegation against the petitioner is that he along with his family members, soon after marriage, has started demanding for household articles and the father of the opposite party no. 2 had purchased the same including TV, fridge, air conditioner, washing machine, bed, sofa etc. costing about Rs. 1,10,000/- and the father had also given gifts at the time of marriage of about Rs. 25 lakhs, household articles worth Rs. 2.5 lakhs and ornaments of Rs. 3 lakhs at the time of *bidai*. It is further alleged that when the paternal aunt of the petitioner came to Delhi, upon her instigation, the petitioner and his younger



brother started torturing her and also abusing her and had also snatched her ATM card and the opposite party no. 2 not disclosing the password, the petitioner had broken the ATM card and mobile and had also assaulted her and when she was ill, they did not provide any medical facility and has demanded that her father purchase one flat in Delhi and only then she would be given respect and allowed to stay. The allegation further is that in the meantime, the opposite party no. 2 became pregnant and when the due date was approaching, the accused sent her to their hometown Gazipur from Delhi and on 28.06.2017 at Sadar Hospital at Gazipur, a female child was born but neither the petitioner nor his mother nor his younger brother came to see the child which forced the opposite party no. 2 to go to Buxar with her father and when she came to Delhi, the behaviour of the accused was very aggressive towards her and she was kept hungry and thirsty and finally her father and two brothers and another person came to Delhi on 10.03.2019 and despite efforts to settle the matter, as the father of the opposite party no. 2 expressed his inability to purchase him a flat as dowry, despite twice *panchayati* taking place, the efforts failed and on 18.03.2019, she was forcibly brought from Delhi to her parents' house at Buxar along with her baby and told that she would be divorced.



8. Learned counsel for the petitioner submitted that the allegations are false as her behaviour was totally unacceptable right from the beginning because she did not want the petitioner to live with his mother. It was further submitted that because the father of the opposite party no. 2 is an Advocate in the Civil Court at Buxar, she is taking advantage of the status and torturing the petitioner and his entire family members. Learned counsel submitted that such behaviour forced him to file a divorce suit before the Principal Judge, Family Court, Patiala House at Delhi on 10.04.2019 and when notice was issued on 11.04.2019 and also received by opposite party no. 2 on 05.05.2019, she had filed a transfer case before the Hon'ble Supreme Court. It was submitted that in such background it is clear that just because the petitioner had filed a divorce suit at Delhi, the present false criminal case has been instituted. Learned counsel submitted that the petitioner had tried his best to reconcile the matter but the opposite party no. 2 was belligerent and even till recently, the opposite party no. 2 and her family members did not behave properly with the petitioner and his family members.

9. Learned APP submitted that there is clear allegation of demand of dowry and torture and also the attitude of the



petitioner both during Mediation and before this Court clearly indicates that the fault is more on his part.

10. Learned counsel for the opposite party no. 2 submitted that the petitioner is trying to gain sympathy of the Court by showing himself as the victim. It was submitted that the marriage of the petitioner itself was initially held as he had misrepresented himself to be a Chartered Accountant working in a private form at Delhi and the take away salary was over Rs. 38,000/-. It was submitted that his visiting card as also a certificate of the Institute of Chartered Accountants of India clearly indicates that he is a qualified Chartered Accountant and, thus, his plea that he is not earning much is totally false. It was submitted that had the father of the opposite party no. 2 misused his position, there would have been a spate of litigation right from the beginning but because being the father of a girl and there being a grandchild and also understanding the social ground realities, he had acted with restraint and had in fact, counselled the daughter for rapprochement which she has tried, as in the Mediation as also this Court, she has taken the categorical stand that she is ready to go and live in the matrimonial home without any condition. Learned counsel submitted that the divorce case has finally been transferred to Sasaram in Bihar. Learned counsel



submitted that the petitioner has tried to show everything in a distorted manner before the authorities as also this Court and when the Court gave him an opportunity, he gave the impression that he would do so with open mind but he seems to have acted only to create an impression so that the Court may grant indulgence to him. Learned counsel submitted that the father of the opposite party no. 2 coming from a reasonably good ground, it is obvious that he would have spent the maximum, as per his capacity, on the marriage and would have also given gifts and money to his daughter and, thus, there is nothing incongruous or exaggerated about the same.

11. Having considered the submissions of learned counsel for the parties, the Court again called upon learned counsel and specifically asked them as to whether any points the Court had missed to record and they would like to further submit for consideration, learned counsel for the parties submitted that whatever has been submitted by them has been recorded by the Court and they had no further submission to add.

12. Having finally considered the facts and circumstances of the case and submissions of learned counsel for the parties, at the very outset, the Court would indicate that from the interaction it had with the petitioner on 19.01.2021 and even



today, the Court finds that he lacks *bona fide*. All the pleas raised by him before the Court appears to be either imaginary or untenable. Even his behaviour before the Court appears to be only to portray him as being the adversely affected party i.e., the victim. The Court had even gone to the extent of counselling him on the last occasion, and had hoped that at least by his behaviour, that he would genuinely reconsider the whole issue, but today coming up with things which the Court finds to be even childish and purely imaginary, the Court can only express its opinion that he has, for reasons best known to him, taken a very rigid stand and even levelled allegation which the Court is not recording as the same were not in good taste, that too, from a husband, more so, against the wife, who is the mother of his minor daughter. Even with regard to the future prospect of the daughter, when the Court interacted with him, there was nothing which indicated that he had any sympathy or was ready to discharge the obligation cast upon a father. Coming to the issue of there being misrepresentation at the time of marriage, the Court, before which all facts are not there and it is also not required to go into such facts, especially in these proceedings, can only broadly observe that a well to do father would obviously not marry his daughter to a person who is earning a meager amount or with whom the daughter may not



have a very pleasant life due to fund crunch, which clearly indicates that there must have been reasons for the opposite party no. 2 and her father to believe that the petitioner was earning a good amount and had the capacity to properly maintain the daughter and take care of her. Moreover, it is very clear that the father of the opposite party no. 2, being an Advocate fully knew the consequences of couples fighting with each other which leads to destruction of families, has exercised restraint and not taken any precipitative action against the petitioner, both being aware of the law as also being in the father of a daughter who had a minor child, especially in the prevailing social ground realities.

13. In such background, when the Court had put a direct question to the petitioner as to what was the reason a wife would leave her husband, especailly when there was a minor daughter, knowing that she had no other door open, he had absolutely no reply to the same. Again, when the Court put a query to him as to whether his stand was that the opposite party no. 2 was suffering from some mental ailment, again the petitioner could not come up even with one instance to indicate that she was not mentally fit to live with him as his wife. Thus, finally when the Court put a query for giving one good reason why the wife would take such an



extreme step, at the cost of risking her future and that of her child, again the petitioner remained silent.

14. Having considered the matter in its entirety and taking an overall view, for the purposes of consideration of the present application, the Court finds that it cannot be said that the allegations are exaggerated, misplaced, much less, false.

15. Thus, in the background of the discussions made hereinabove, the Court is not inclined to grant pre-arrest bail to the petitioner.

16. Accordingly, the application stands dismissed.

17. The interim protection granted to the petitioner *vide* order dated 12.12.2019, stands withdrawn.

(Ahsanuddin Amanullah, J.)

P. Kumar

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