

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.34820 of 2019

Arising Out of PS. Case No.-614 Year-2018 Thana- SAHARSA COMPLAINT CASE
District- Saharsa

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GANESH KUMAR @ GANESH Son of Vishundev Mahato Resident of
Village - Udaypur, P.S.- Rosera, District- Samastipur

... .. Petitioner

Versus

1. The State of Bihar
2. Babita Devi Wife of Ram Dayal Yadav Resident of Village - Chandauli, P.S.-
Bithan, District- Samastipur at Present resident of Village and P.O. and P.S. -
Saurbazar, District- Saharsa

... .. Opposite Party/s

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with
CRIMINAL MISCELLANEOUS No. 21537 of 2020

Arising Out of PS. Case No.-2043 Year-2018 Thana- MUZZFARPUR COMPLAINT CASE
District- Muzaffarpur

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GANESH KUMAR @ GANESH Son of Vishundev Mahato Resident of
Village- Udaypur, Police Station- Rosera, District- Samastipur.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Geeta Devi W/o Ranjit Kumar Resident of Village- Hasanpur, Post Office
and Police Station- Hasanpur, District- Samastipur.

... .. Opposite Party/s

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Appearance :

(In CRIMINAL MISCELLANEOUS No. 34820 of 2019)

For the Petitioner/s : Mr. Sanjeev Ranjan

For the Opposite Party/s : Mr. Shailendra Kumar Singh

(In CRIMINAL MISCELLANEOUS No. 21537 of 2020)

For the Petitioner/s : Mr. Sanjeev Ranjan

For the Opposite Party/s : Mr. A.G

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

21 31-08-2022 With the consent of learned counsel for the petitioner,

both the cases have been heard together.



These applications have been filed under Section 438 of the Code of Criminal Procedure for grant of anticipatory bail in connection with Complaint Case No. 614 of 2018 and Complaint Case No. 2043 of 2018 pending before the Courts below at Saharsa and Muzaffarpur respectively.

Why these applications have been heard together can be ascertained from this Court's orders dated 04.09.2019 passed in Criminal Miscellaneous No. 34820 of 2019 and 07.08.2020 passed in Criminal Miscellaneous No. 21537 of 2020. Both orders are being reproduced hereinbelow:-

“ Criminal Miscellaneous No. 34820 of 2019

This application has been filed seeking grant of anticipatory bail in connection with Complaint Case No. 614 of 2018 registered for the offences punishable under Sections 420, 364, 366, 376, 354 and 34 of the Indian Penal Code.

The complaint case was filed by 'X'. The complaint petition, which is at Annexure-1 to this application, bears her photograph. There is statement made in paragraph-3 of the application that the petitioner has clean antecedent.

A counter affidavit has been filed on behalf of the complainant opposing the prayer for bail which bears LTI of the complainant. In the counter affidavit, the statement made in paragraph-3 that the petitioner has no criminal antecedent has been controverted and it has been stated that there are two other complaint cases of similar nature lodged against the petitioner, which are as under :-



(i) Complaint Case No. 712 of 2018 disclosing commission of offence punishable under Sections 323, 354, 362, 367, 370, 420, 120-B and 376 of the Indian Penal Code which is pending before the learned Chief Judicial Magistrate, Samastipur.

(ii) Complaint Case No. 2043 of 2018(Trial No. 2146 of 2018) for the offences punishable under Sections 406, 420, 323, 376, 504 and 506 of the Indian Penal Code, which is pending.

Copies of the above noted two complaint petitions have been brought on record. Copy of the complaint petition of Complaint Case No. 712 of 2018, pending before the learned Chief Judicial Magistrate, Samastipur, shows photograph of the complainant of that case, whose name has been described as 'Y'. On the complaint petition of complaint Case No. 2043 of 2018 photograph of the complainant of that case is not visible. Coincidentally, names of the complainant of Complainant Case No. 712 of 2018 and Complainant Case No. 2043 of 2018 are same. Their husbands' name, as shown in the complaint petitions, are different.

There is yet another coincidence. The photograph of the complainant of present case almost tallies with the photograph of the complainant of Complaint Case No. 712 of 2018.

The counter affidavit has been sworn by the complainant herself enclosing her Aadhar Card.

Learned counsel for the petitioner points out that the photograph of the Aadhar Card holder, as depicted in the card, is visibly different from one available on the complaint petition.

When the matter was taken up on the previous occasion on 28.08.2019, keeping in mind the aforesaid circumstances, the complainant was directed



to be personally present.

A lady has appeared who claims to be the complainant.

Learned counsel for the complainant disputes that she is the lady who had instructed him to contest the present anticipatory bail application and the said lady is still on way to reach this Court.

It has been submitted on behalf of the petitioner that he is working as Vigilance Inspector in Delhi Metro Rail Corporation in Delhi. He had filed a complaint case against one Dr. Satish Prasad Singh of Samastipur for being negligent in treatment leading to death of the petitioner's mother. According to him, after filing of Complaint Case No. 497 of 2017, the present complaint case and other two complaint cases have been maliciously got instituted at the instance of said Dr. Satish Prasad Singh.

For the present, the Court will not go into that aspect of the matter. Let the lady, who has come today appear before the Registrar General at 2.30 p.m. with her Aadhar Card. The entire matter, in Court's opinion, requires in depth enquiry at appropriate level. The Registrar General will retain a copy of the Aadhar Card and take her LTI on a separate sheet of paper and other details to locate her address and identification.

As has already been noted above, according to Mr. Ranjit Kumar Yadav, learned counsel for the complainant, the lady, who had instructed him to oppose the anticipatory bail application, has yet not come and she is likely to come later. He submits that he shall produce the complainant, on whose instructions he is opposing the present anticipatory bail application, before the learned Registrar General tomorrow (05.09.2019).

Let learned counsel for the complainant



produce the complainant, who has instructed him to contest the present anticipatory bail application, before the Registrar General tomorrow(05.09.2019) at 11.30 a.m. Learned Registrar General shall thereafter obtain a copy of the Aadhar Card from her, her LTI and other details necessary for identifying her address.

List this case on 09.09.2019.

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Criminal Miscellaneous No. 21537 of 2020

Heard Mr. Sanjeev Ranjan, learned counsel appearing on behalf of the petitioner and Mr. Shantanu Kumar, learned Additional Public Prosecutor, for the State of Bihar.

Issue notice to the opposite party No.2, both by registered cover with A/D as well as under ordinary process, for which requisites etc. must be filed within two months.

In view of the orders passed in Cr. Misc. No. 34820 of 2019, it is directed that if the petitioner, above-named, is sought to be arrested, in the meanwhile, he shall be released on provisional bail on furnishing bail bond of Rs. 10,000/- (Ten Thousand), with two sureties of the like amount each, to the satisfaction of learned A.C.J.M.-IV, Muzaffarpur, in Complaint Case No. 2043 of 2018.

List this case after service of notice along with Cr. Misc. No. 34820 of 2019.

Since there is a lock down, the Court has considered it appropriate to adopt following procedure for communication of the present order :-

(i) The order, which has been dictated during the course of the proceedings of virtual Court, shall be communicated to me on my e-mail I.D. by the Secretary.



(ii) The corrected copy of the order shall be transmitted by me from my e-mail I.D. to the Secretary, which shall be treated to be the authentic copy of the order passed by this Court today in the present proceeding.

(iii) Hard copy of the order, duly signed by me, shall be preserved in my residential-office for documentation and future use, if any.

(iv) Let a copy of the order be communicated to the learned Court below through e-mail or any other appropriate electronic mode by the Registry.

Let steps be taken by the Registry for uploading of the present order without compromising with the norms of social distancing.”

Notices were issued to the opposite party No. 2, after cancellation of the earlier *Vakalatnama* filed on her behalf, based on the statement made by learned counsel representing her. The order dated 09.09.2019 passed in Criminal Miscellaneous No. 34820 of 2019 is being reproduced hereinbelow:-

“Learned Registrar General has submitted a report in compliance of this Court order dated 4.9.2019.

Mr. Ranjit Kumar Yadav, learned counsel appearing on behalf of the Opposite Party No. 2 has submitted that the Opposite Party No. 2 is not in contact with him anymore and he does not have any instruction in this case. This is to be noted that though the Opposite Party No. 2 was required to present herself before the Registrar General in the light of the order dated 4.9.2019, but she did not appear.

In view of the statement of learned counsel appearing on behalf of the Opposite Party No. 2 to



withdraw the Vakalatnama, The Vakalatnama filed on behalf of the Complainant/Opposite Party No. 2 stands cancelled.

Issue notice to the opposite party No. 2. Registry to take steps.

List this case on 4.11.2019 after service of notice.”

In view of this Court's direction dated 04.09.2019, the learned Registrar General of the High Court was directed to cause an enquiry, as can be noticed from the said order which has been quoted hereinabove. The learned Registrar General has submitted a report to the effect that opposite party No. 2 did not appear despite notices issued to her.

The service report in respect of the notices upon opposite party No. 2 in Criminal Miscellaneous No. 3480 of 2019 indicates that the opposite party does not reside at the place of address which has been given in the complaint petition.

The petitioner was granted protection with an observation that no coercive steps shall be taken against him.

Considering the facts and circumstances, the Court is of the view that no purpose will be served by keeping these matters pending any further as there may be a circumstance that no person by the name of opposite party No. 2 exists at all.

Accordingly, these applications are allowed.

Let the petitioner, namely, Ganesh Kumar, in the event of his arrest/surrender within six weeks from today in the



court(s) below, be released on bail on furnishing bail bonds of Rs. 10,000/-(ten thousand), with two sureties of the like amount, each to the satisfaction of learned Chief Judicial Magistrate-I, Saharsa in connection with Complaint Case No. 614 of 2018 and learned Additional Chief Judicial Magistrate-IV, Muzaffarpur in connection with Complaint Case No. 2043 of 2018, subject to the condition as laid down under Section 438(2) of the Code of Criminal Procedure.

This is subject to the condition that the petitioner shall present himself before the Police/ Court(s), as the case may be, as and when required and in the event of failure on his part to appear before the court(s) on two consecutive occasions, his bail bonds shall be liable to be cancelled.

(Chakradhari Sharan Singh, J)

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