

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.229 of 2023

Arising Out of PS. Case No.-102 Year-2022 Thana- MAHILA P.S. District- Patna

Mayank Kumar, Son of Vinay Kumar Pal, Resident of House No.-89, Budh Marg, New Police Line, P.S.- Buddha Colony, District- Patna

... .. Petitioner

Versus

1. The State of Bihar through Principal Secretary, Home Department, Government of Bihar, Patna
2. The Director General of Police, Bihar, Patna
3. The Inspector General of Police, Central Range, Patna
4. The Deputy Inspector General of Police, Central Range, Patna
5. The Superintendent of Police, Patna
6. The Station House Officer, Mahila Police Station, District- Patna
7. Usha Sinha, Assistant-Sub Inspector, Mahila Police Station, District- Patna
8. Archana Kumari, Wife of Mayank Kumar, Resident of Village- Ranauli, P.S.- Bhatnaha, District- Sitamadhi, presently resident of- C/o Ram Babu, Bank Road, New Police Line, Police Station- Buddha Colony, District- Patna

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. Shashank Shekhar, Advocate Mr. Rajeev Ranjan, Advocate Mr. Anurag Kumar, Advocate Mr. Mukul Kumar, Advocate
For the State	:	Mr. S.D. Yadav, AAG-9 Mr. Sheo Shankar Prasad, SC-8 Mr. Sanjay Kumar, AC to SC-8
For the R. No.7	:	Mr. Sudhir Kumar Singh, Advocate Mr. Amit Kumar Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
CAV JUDGMENT

Date : 21-12-2023

Since the serial number of parties in the respondent column have been incorrectly numbered, learned counsel for the petitioner is permitted to make necessary correction in the petition.

2. This writ application has been filed seeking a direction restraining respondent no. 6 from harassing the petitioner in the garb of Mahila P.S. Case No. 102 of 2022 and further to ensure a fair investigation in the matter as also to grant appropriate compensation to the petitioner and for grant of any other suitable relief/reliefs for which the petitioner may be found entitled to in the eyes of law.

Brief facts of the case

3. The petitioner is an employee of the State Bank of India at Exhibition Road Branch, Patna. It is his case that he came in contact with respondent no. 8, who was posted as a Female Constable in Patna District Force. They became good friends and got involved in a love affair. On 19.09.2020, the private respondent approached Mahila Police Station, Gardanibagh, Patna and lodged a complaint alleging that she has been sexually exploited by the petitioner on the pretext of marriage.

4. It is further case of the petitioner that on having been pressurized, he with an intention to move ahead in his life, married the private respondent on 11.11.2020, however, soon after the marriage, the differences started to arise and that led to filing of a Matrimonial Case bearing No. 1506 of 2021 by the

petitioner seeking a decree of divorce.

5. It is stated that respondent no. 8 did not cooperate in the matrimonial case and with an intention to falsely implicate the petitioner, she lodged Mahila P.S. Case No. 102 of 2022, dated 16.08.2022, registered under Sections 498A and 34 of the Indian Penal Code read with Sections 3 and 4 of the Dowry Prohibition Act. A copy of the F.I.R. has been brought on record as Annexure '1' to the writ application.

6. It is stated that the petitioner applied for anticipatory bail in the court of learned Sessions Judge, Patna, vide A.B.P. No. 7307 of 2022, in which he got interim protection by virtue of the order dated 14.09.2022, wherein the learned court directed that no coercive steps shall be taken against the petitioner till next date. The court called for the case diary along with criminal antecedent of the petitioner, if any, from the Investigating Officer of the case as well as issued notice to the informant. The case was posted for further hearing on 11.10.2022.

7. It is the case of the petitioner that the interim protection was extended from time to time, which would be evident from the orders dated 11.10.2022 and 16.11.2022. On 16.11.2022, the learned court directed that no coercive step shall

be taken till next date, which was fixed on 13.12.2022. It is stated that before the next date of hearing on 13.12.2022, the respondent nos. 6 and 7 in connivance with the private respondent no. 8 arrested the petitioner on 04.12.2022 and dragged him all the way from his house to Mahila Police Station while keeping him handcuffed. The petitioner has enclosed Annexure '4' to the writ application, which is a photograph.

8. The bone of contention in the present writ application is that despite the petitioner producing the order granting interim relief to him by the learned Sessions Judge, Patna, the respondents were adamant and paid no heed to the same. The petitioner was produced before the learned Judicial Magistrate, 1st Class Patna on 05.12.2022 for purpose of remand, but after perusal of the records of the case, the learned Magistrate found that the interim order of no coercive step to be taken was available in the record, hence he was not remanded. It is one of the submissions of the learned counsel for the petitioner that the arrest of the petitioner was in deliberate violation of the judgment of the Hon'ble Supreme Court in the case of **Arnesh Kumar vs. The State of Bihar & Anr.** reported in **(2014) 8 SSC 273**. It is submitted that in this manner, the respondent no. 8 harassed the petitioner despite there being an

order of the competent court.

Stand of the Respondents

9. A counter affidavit has been filed in this case on behalf of respondent nos. 5 and 6. The allegation of harassment has been denied by the answering respondents. It is stated that in fact, in course of investigation, the case has been found true under Section 377 of the Indian Penal Code against the petitioner and it is stated that the offence being punishable for a period more than seven years, the police officer was competent to arrest the petitioner. On 4th December 2022, when the arrest was effected, neither the petitioner nor his learned counsel produced any order showing extension of the no coercive step order which was passed on 14th September, 2022. It is stated that in the Station Diary vide Entry No. 79 dated 04.12.2022, it has been duly entered that the petitioner was asked to produce the order of the court, if any, but he did not produce any order of the court.

10. This case was heard on various dates and having noticed the kind of submissions on behalf of the petitioner, this Court, vide its order dated 12.10.2023, directed to bring this matter to the notice of the Director General of Police, Bihar, Patna (Respondent No. 2), who will constitute an inquiry in the

administrative side in the present matter and submit a report to this Court within four weeks. The petitioner was given an opportunity to place the photographs in which he has been seen handcuffed.

11. On 23.11.2023, learned counsel for the State placed before this Court a copy of the report of the Senior Superintendent of Police, Patna as contained in Letter No. 2595 dated 22.11.2023, addressed to the Deputy Inspector General of Police, Central Range, Patna. This Court has briefly taken note of the contents of the report in its order dated 23.11.2023. The crux of the report is that the subsequent orders of extension of no coercive steps to be taken against the petitioner were not made available to the Investigating Officer and the same was not available in the Office of the Senior Superintendent of Police, Patna. This Court being *prima-facie* of the view that the report is not convincing, called upon the Senior Superintendent of Police, Patna to say as to who would be responsible for this lapse, if the order of the court was not known to the Investigating Officer and the Office of the Senior Superintendent of Police, Patna.

12. Pursuant to the said order, a supplementary counter affidavit has been filed on behalf of respondent no. 5

which has been sworn by Senior Superintendent of Police, Patna himself. By this affidavit, it has been placed before this Court that the office of the deponent deputed a nodal officer to monitor and communication of the order passed by each and every concerned learned court vide District Order No. 4771 of 2023 dated 25.09.2023. It is also stated in paragraph '6' of the supplementary counter affidavit that even the Public Prosecutor, Civil Court, Patna is duty bound to communicate the orders of no coercive steps passed by learned Session Judge, Patna or the learned Additional Sessions Judge, to whom the case was transferred for final hearing.

13. It is further stated that the deponent vide his Memo No. 2625 dated 26.11.2023 sought information from the Public Prosecutor, Civil Court, Patna as to whether the order of no coercive steps passed in A.B.P. No. 7307 of 2022 was sent or communicated to any concerned authority for its compliance. In response, the learned Additional Public Prosecutor, Civil Court, Patna has vide Letter No. 355 dated 28.11.2023 informed the deponent that the order granting no coercive steps had not been communicated by him but the court of learned A.D.J.-XXV, Patna, had communicated the order to the learned Judicial Magistrate, 1st Class, Patna.

14. The S.H.O. (Respondent No. 6) and the I.O. of the case have taken identical stand. The S.H.O. has brought on record a copy of the supervision note of the City S.P., Central, Patna issued on 30.09.2022 in which while agreeing with the opinion of the Deputy Superintendent of Police (Law and Order), Patna, that this case is true under Sections 377/498A/341/323/504/506/34 Indian Penal Code and 3/4 of the Dowry Prohibition Act against the petitioner, he issued further directions to the I.O. and the very first direction was to arrest the accused-petitioner and, in case he is not arrested, then steps for attachment (*kurki/japti*) be taken. It is the stand of the Investigating Officer that she had obeyed the command of her supervising authority and, as the petitioner could not produce the order extending interim protection to him, he was arrested and brought to the Police Station, but when the order of the learned Additional Sessions Judge-XXV, Patna was found in the records of the learned Judicial Magistrate, 1st Class, Patna, the petitioner was not remanded to judicial custody and he was released.

Consideration

15. This Court has heard learned counsel for the parties and perused the records. The facts of the case are

admitted to the extent that the petitioner was arrested on 04.12.2022 by respondent no. 7 and he was brought to the Police Station from where he was produced before the learned Magistrate but he was released after the learned Magistrate found that there was an interim order of the learned Additional Sessions Judge-XXV, Patna in A.B.P. No. 7307 of 2022 directing that no coercive step is to be taken against the petitioner till next date which was fixed on 13.12.2022. From the records, it is clear that the City S.P., Patna had supervised the case and on finding that the case was found true under Section 377 of the Indian Penal Code and other Sections of the Indian Penal Code as well as the Dowry Prohibition Act, he had directed the I.O. to arrest the accused, thus the I.O. was acting as per the direction of the City S.P., Patna, who was the supervising authority.

16. This Court further finds from the records that although the learned Sessions Judge, Patna had ordered for issuance of notice to the informant as back as on 14.09.2022 itself, learned counsel for the petitioner had not filed requisites for issuance of notice to the informant and the court directed once again on 03.01.2023 to the learned counsel for the petitioner to file requisites for notice, the notice was issued to

the informant on 03.01.2023, therefore, from the records, it also appears that the informant was not appearing in the anticipatory bail application on the various dates when the interim order of no coercive action was being extended by the learned court.

17. Although, it is the statement of the petitioner that he had produced the extension order granting interim protection to him to the Investigating Officer at the time of his arrest, but from the copies of the certified copies of the entire ordersheets of the court of learned Additional Sessions Judge-XXV, Patna passed in A.B.P. No. 7307 of 2022 placed on the record, it appears that the certified copies of those orders were obtained by the petitioner on or after 12.01.2023. It is the case of the petitioner that he had produced copy of the order before the Investigating Officer on 04.12.2022, but with the writ application, at least, he has not enclosed any copy of the order of interim protection, showing that he had obtained the certified copy of the said order from the court prior to 04.12.2022.

18. Pursuant to the direction of this Court, the Director General of Police, Bihar, Patna, has got the matter inquired into in the administrative side and in the report submitted by the Senior Superintendent of Police, Patna it is stated that the copy of the order granting interim protection was

neither made available by the petitioner to the Investigating Officer at the time of his arrest, nor there was any communication to the Office of Senior Superintendent of Police, Patna, in this regard, from the Office of the Public Prosecutor, Civil Court, Patna. In this regard, the statements made in the supplementary counter affidavit filed by Senior Superintendent of Police, Patna have not been controverted, thus, in the given facts and circumstances of the case and the materials it would not be possible for this Court to come to a definite opinion that the I.O. of the case (Respondent No. 7) had been acting in connivance with the private respondent no. 8. As observed above, she had been directed by the City S.P., Patna to arrest the petitioner after the case was found true against him. This Court cannot record a definite finding that the petitioner had produced a copy of the order granting interim protection to him before the I.O. at the time of his arrest because there is no statement in the writ application that he had obtained the order passed by the learned Additional Sessions Judge-XXV, Patna on 16.11.2022 and at the same time, the copy of the certified copy enclosed with the writ application is showing that the same has been obtained only on 12.01.2023.

19. In its' writ jurisdiction under Article 226 of the

Constitution of India, this Court is of the considered opinion that unless the facts are crystal clear and lead to an irresistible conclusion that the arrest was in deliberate violation of the order of the court, it would not be safe to indict the I.O. and record a finding against her conduct.

20. This Court, therefore, finds that the reliefs prayed in the writ application are not fit to be granted in its extraordinary writ jurisdiction in the facts of the present case. However, it will be open to the petitioner to seek his remedy before a competent court in appropriate jurisdiction where he may be allowed to adduce evidences in accordance with law.

21. This writ application is disposed of accordingly.

(Rajeev Ranjan Prasad, J)

Rishi/-

AFR/NAFR	
CAV DATE	30.11.2023
Uploading Date	21.12.2023
Transmission Date	21.12.2023