

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.13724 of 2024

Arising Out of PS. Case No.-11700 Year-2022 Thana- PATNA COMPLAINT CASE District-
Patna

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Chetnanand Son Of Umesh Prasad Pandey Resident Of Village- 29 A West
Amandpuri, Boring Road, In Front Of Sbi Atm, Ps- Shri Krishnapuri, Dist-
Patna

... .. Petitioner/s

Versus

1. The State of Bihar
2. Dr. Divya Archana Daughater Of Satyanarayan Singh Resident Of Village-
Flat No. 2b, Apna Awas Yog Maya Apartment Parmanand Path Nageshwar
Colony, Ps- Budha Colony, Dist- Patna

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Pravashankar Mishra
For the Opposite Party/s : Mr.Rajendra Singh

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CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

3 25-06-2024 1. Heard learned counsel for the petitioner, learned

A.P.P. for the State and learned senior counsel appearing on

behalf of the OP No. 2.

2. The petitioner apprehends his arrest in Complaint

Case No. 11700(C) of 2022 registered for the offences

punishable under Sections 498A, 406 and 34 of the Indian Penal

Code.

3. The Learned senior counsel for the OP No. 2

submits that he has appeared *suo motu* in the case and has also

filed his counter affidavit but then submits that the counter

affidavit is not a reply to the anticipatory bail application filed



by the petitioner as the copy of the anticipatory bail application has not been served on him, on which the learned counsel appearing on behalf of the petitioner submits that he will serve a copy of the anticipatory bail application on the learned senior counsel appearing on behalf of the OP No. 2 during the course of the day.

4. Learned counsel for the petitioner submits that the dispute is matrimonial and the petitioner has been falsely implicated in the instant case being the husband. It is next submitted that the petitioner along with his parents had moved this court seeking quashing of the order of cognizance by filing Cr. Misc No. 59909 of 2023. The said Cr. Misc No. 59909 of 2023 was taken up on 8-9-2023, when notices were issued on the complainant and the case was directed to be listed on 8-1-2024 and further proceedings before the learned trial court was stayed.

5. The learned counsel for the petitioner next submits that the date on which this court stayed the proceedings before the learned trial court, i.e., 8-9-2023, on the same date, process under Section 82 Cr.P.C was issued but the learned Magistrate after coming to know about the order dated 8-9-2023, did not issue the process under Section 82 Cr.P.C.



6. The learned counsel further submits that in pursuance of the notice issued by this court, the OP No. 2 appeared in Cr. Misc No. 59909 of 2023, thereafter the case was taken up on 16-1-2024 and the petitioner of the present case and the OP No. 2 were directed to remain physically present before the learned Mediator for getting the dispute resolved but the mediation proceedings failed and thereafter Cr. Misc No. 59909 of 2023 was taken up on 23-4-2024 and the petitioner herein, being husband, sought permission to withdraw the quashing application with respect to himself and the same was permitted to be withdrawn, while the order of cognizance with respect to the father-in-law and the mother-in-law was quashed by order dated 23-4-2024.

7. The learned counsel next submits that petitioner had filed anticipatory bail application in the court of learned Additional Sessions Judge-XXIII, Patna under Section 438 Cr.P.C, but the same inadvertently was labelled as Bail Petition No. 7087 of 2023. It is next submitted that since petitioner in Cr. Misc No. 59909 of 2023 was given interim protection by order dated 8-9-2023 as such he did not have any apprehension of arrest and it appears that the learned lawyer appearing on behalf of the petitioner did not appear before the court of the learned



Additional Sessions Judge-XXIII, Patna in BP No. 7087 of 2023 on 10-11-2023 which led to dismissal of the anticipatory bail application for non-prosecution.

8. The learned counsel appearing on behalf of the petitioner next submits that Cr. Misc No. 59909 of 2023 came to be withdrawn with respect to the petitioner by an order dated 23-4-2024 as such petitioner who presently is working in U.S.A contacted his lawyer for pursuing his anticipatory bail application, but by then it was already dismissed for non-prosecution.

9. At this stage, the learned senior counsel appearing on behalf of the OP No. 2 submits that Cr. Misc No. 59909 of 2023 came to be withdrawn with respect to the petitioner by an order dated 23-4-2024, thereafter the process issued under Section 82 Cr.P.C on 8-9-2023 was revived and the summons were sent on the petitioner on 3-5-2024.

10. The learned counsel appearing on behalf of the petitioner submits that the dispute is completely matrimonial and had an FIR been instituted instead of a complaint, the petitioner would have got the benefit of Section 41A of the Cr.P.C. but then a complaint case came to be instituted and the learned Magistrate based on the material which came during the



inquiry took cognizance, but then by that time petitioner did not have any opportunity to put forth his claim. It is next submitted that today the petitioner has come to know that process under Section 82 Cr.P.C has been issued on 3-5-2024, but the process till date has not been served on him, hence he is not aware. It is further submitted that petitioner is facing the present complaint case along with a case under the Domestic Violence Act and the petitioner has also instituted a divorce case, being Divorce Case No. 1167 of 2022, which is pending adjudication before the court of learned Principal Judge, Family Court, Patna in which the OP No. 2 has appeared. It is next submitted that the instant complaint case and the Domestic Violence Act case came to be instituted after the petitioner had filed the aforesaid divorce case. It is also submitted that petitioner is giving a monthly maintenance of Rs. 10,000/- to the OP No. 2 and the maintenance is being paid regularly. It is next submitted that on one hand, the OP No. 2 is accepting the amount of maintenance and on the other hand, is pursuing the case with an intention to send the petitioner to jail.

11. The learned senior counsel appearing on behalf of the OP No. 2 submits that instant anticipatory bail application is not maintainable for the reason that the order impugned is not



on merit rather was dismissed for non-prosecution.

12. The Court finds force in the submission of the learned senior counsel appearing on behalf of the OP No. 2. The petitioner is directed to approach the court of learned Additional Sessions Judge-XXIII, Patna for getting BP No. 7087 of 2023 restored for getting it adjudicated on merit. The court expects that since the dispute is matrimonial, no coercive action shall be taken against the petitioner.

13. The learned counsel for the petitioner, at this stage, submits that the restoration application before the learned Additional Sessions Judge-XXIII, Patna shall be filed within three weeks from today.

14. In the event if the restoration application is not filed on or before 16-7-2024, the present order shall lose its relevance.

15. With the aforesaid observations, the anticipatory bail application is disposed of.

(Satyavrat Verma, J)

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