

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.79642 of 2023

Arising Out of PS. Case No.-2072 Year-2020 Thana- SARAN COMPLAINT CASE District-
Saran

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Prem Shankar Yadav S/O Shiv Shankar Yadav R/O Village- Korari, P.S-
Daraunda, Distt.- Siwan.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Pratima Devi W/O Prem Shankar Yadav, D/O Bhrigunath Ray R/O Chakdah,
P.S- Janta Bazar, Distt.- Saran At Chapra.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr.Rakesh Kumar Sharma
For the Opposite Party/s	:	Mr.Ahmad Ali
For the Informant/s	:	Mr. Nawnit Kumar Tiwary
		Mr. Ravi Bhushan Prasad Sinha
		Mr. Prashant Bhushan

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**CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH
SINGH**

ORAL ORDER

5 23-04-2024 Heard learned counsel for the petitioner as well as

learned counsel for the informant and learned Additional Public

Prosecutor for the State.

2. The petitioner is apprehending his arrest in
connection with Complaint Case No. 2072/2020 Inquiry No.
880 of 2022 dated 12.10.2020 registered for the offences
punishable under Sections 323, 379, 313, 384, 406, 494, 498A
and 504 of the Indian Penal Code and cognizance has been
taken under Section 498A of the IPC.

3. As per the prosecution case, the petitioner and the



co-accused persons are alleged to have tortured the complainant mentally and physically due to non-fulfillment of demand of Rs. 2 lacs, a golden chain and a motorcycle as dowry.

4. Learned counsel for the petitioner has submitted that the petitioner has falsely been implicated in this case. There is general and omnibus allegation against the petitioner who is husband of the complainant. The petitioner has neither demanded any dowry nor tortured the complainant. The petitioner is a constable in Bihar Police. The petitioner has relied upon the judgment of this Court in the case of **"Md. Naimul Haque Ansari @ Naimul Haque Ansari & Ors. Vs. The State of Bihar, reported in 2006(3) PLJR 182."** Learned counsel has further submitted that Section 498A of the IPC is triable by the Magistrate. Learned counsel has further relied on the judgments in the case of **Satendra Kumar Antil Vs. Central Bureau of Investigation and Another (2022) 10 SCR 351** and **Md. Asfak Alam Vs. The State of Jharkhand & Anr passed in Criminal Appeal No(s). 2207 of 2023 arising out of Special Leave Petition (CRL.) No. 3433 of 2023.** The petitioner is accused in one more criminal case as stated in para 3 of the bail petition.

5. Learned A.P.P. for the State as well as learned



counsel for the informant have vehemently opposed the prayer for anticipatory bail of the petitioner. Learned counsel has further submitted that the instant anticipatory bail application is not maintainable as vide order dated 24.04.2023, the process u/s 82 of the Cr.P.C. has already been issued against the petitioner. It is further submitted that this anticipatory bail application is filed after the issuance of the process u/s 82 of the Cr.P.C. The petitioner is declared a proclaimed offender. Learned counsel for the informant has further relied upon the case of (*Abhishek vs. State of Maharashtra (2022) 14 SCC 529*) where it was held that “As regards the implication of proclamation having been issued against the appellant, we have no hesitation in making it clear that any person, who is declared as an ‘absconder’ and remains out of reach of the investigating agency and thereby stands directly at conflict with law, ordinarily, deserves no concession or indulgence.” Reliance has further been placed on the decisions of (*Lavesh vs. State (NCT of Delhi) (2012) 8 SCC 730*, *Adri Dharan Das vs. State of W.B. (2005) 4 SCC 303*) and (*Prem Shankar Prasad vs. State of Bihar 2021 SCC Online SCC 955*) and in the case of (*State of Haryana vs. Dharamraj (Cr. Appeal No. 2635 of 2023 @ out of SLP (Cri.) No. 2256 of 2022, reported in 2023 LiveLaw (SC) 739: 2023*



INSC 784) disposed of 29.08.2023 wherein the Hon'ble Apex Court has held that: "*Anticipatory bail can be granted to a person to a proclaimed offender only in exceptional and rare case.*" It is further submitted that the materials available on the record do not reveal any exceptional or rate case due to which the plea of anticipatory bail may be considered. Learned counsel for the informant has further relied on the judgment of **Srikant Upadhyay & Ors. Vs. State of Bihar & Anr. SLP (Crl) No. 7940 of 2023.**

6. Considering the aforesaid facts and circumstances of the case as well as the fact that the process u/s 82 has been issued against the petitioner, accordingly, the anticipatory bail petition is not maintainable and the same is disposed of with direction to the petitioner to surrender to the Court below within a period of six weeks from the date of this order and the Court below shall consider the prayer of the bail of the petitioner on the same day without being prejudice by this order.

7. This application stands disposed of.

(Chandra Prakash Singh, J)

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