

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.29008 of 2023

Arising Out of PS. Case No.-10 Year-2020 Thana- MAHILA PS District- East Champaran

Dharmendra Kumar, S/o Ram Ekbal Ray, R/o Village-Pachtaki Yadu, Police
Station- Bairgania, Distt.- Sitamarhi.

... .. Petitioner

Versus

1. The State of Bihar
2. Mikky Kumari, D/o Late Subansh Prasad Yadav, R/o Village- Nirpur, P.S-
Chiraiya, Distt.- East Champaran.

... .. Opposite Parties

Appearance :

For the Petitioner/s :	Mr. Anil Kumar, Advocate
For the Opposite Party/s :	Mr. Dilip Kumar No. 1, APP
For the Opposite Party No.2:	Mr. Kundan Rathore, Advocate
	Mr. Hemant Kumar Sharan, Advocate

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 15-04-2025

Heard learned counsel for the petitioner, learned
APP for the State and learned counsel appearing on behalf of
opposite party no.2.

2. The present application has been preferred for
quashing of the order dated 16.02.2022 as passed by learned
S.D.J.M., Sikrahana at Dhaka, East Champaran in connection
with Mahila P.S. Case No.10 of 2020, whereby the learned
Jurisdictional Magistrate has cancelled the provisional bail of
the petitioner, which has been registered under Sections 341,
323, 498-A, 406 read with 34 of the Indian Penal Code (in



short 'IPC') as well as Sections 3 and 4 of the Dowry Prohibition Act.

3. Petitioner is the husband of O.P. No.2 with whom marriage of O.P. No.2/informant was solemnized on 11.01.2020. For alleged matrimonial discord, petitioner is facing prosecution as per allegation raised through Dhaka (Mahila) P.S. Case No.10 of 2020 registered on 04.03.2020 for the offences punishable under Sections 341, 323, 498A, 406 read with 34 of the I.P.C. and also Section $\frac{3}{4}$ of the Dowry Prohibition Act.

4. Earlier, the petitioner has approached this Court for his anticipatory bail, where he was granted provisional pre-arrest bail with condition that if the dispute is not settled between the parties at the end of petitioner, the court below shall be at liberty to cancel the provisional pre-arrest bail.

5. For better understanding of fact, it would be apposite to reproduce the order dated 19.07.2021 as passed in Cr. Misc. No.39945 of 2020, which is as under:-

"As prayed for, let the learned counsel appearing for the petitioner remove the defect(s), as pointed out by the office vide its notes dated 26.12.2020, within four weeks of



starting of Court proceeding in physical mode in normal course.

Heard Sri Anil Kumar, learned counsel for the petitioner, Sri Awadhesh Kumar Singh, learned A.P.P. for the State and Sri Deepak Kumar, learned counsel appearing on behalf of informant, through video conferencing.

The petitioner apprehends his arrest in connection with Mahila P.S. Case no. 10 of 2020, registered under Sections 341, 323, 498(A) and 406/34 of the Indian Penal Code and Section 3/4 of the Dowry Prohibition Act.

Learned counsel for the petitioner submits that in spite of ill-behaviour of O.P. No.2, who is wife of petitioner, the petitioner is still ready to keep her with full dignity, if she wants to live with the petitioner.

On the other hand, learned counsel appearing on behalf of informant/O.P. No.2 submits that O.P. No.2 also wants to settle the dispute, amicably, and live with her husband (petitioner). The O.P. No.2 has no objection if the petitioner is granted provisional bail and the matter is referred to the District Mediation Centre, East Champaran at Motihari.

Having considered the facts and circumstances of the case and the submissions of the learned counsel for the petitioner and O.P. No.2, let the above named petitioner, in the event of his arrest or surrender by him within six weeks from today, be enlarged on provisional pre-arrest bail, on furnishing bail



bond of Rs. 10,000/- (Ten thousand) with two sureties of the like amount each to the satisfaction of learned Sub-Divisional Judicial Magistrate, Sikrahana at Dhaka, East Champaran in connection with Mahila P.S. Case No. 10 of 2020, subject to the condition as laid down under Section 438 (2) of the Cr.P.C., with a direction to the learned Sub-Divisional Judicial Magistrate, Sikrahana at Dhaka, East Champaran, to refer the matter for settlement of the dispute in between the petitioner and the O.P. No.2 before the District Mediation Centre, East Champaran at Motihari immediately after receipt/production of a copy of this order with a direction to the District Mediation Centre, East Champaran at Motihari to submit its report within six months thereafter.

It is made clear that if the dispute between the petitioner and the O.P. No.2 is settled before the District Mediation Centre, East Champaran at Motihari, then the Court below shall confirm the provisional pre-arrest bail of the petitioner and if the dispute is not settled in between them at the end of the petitioner, the Court below shall cancel the provisional pre-arrest bail of the petitioner. If the dispute is not settled at the end of the O.P. No.2, then also, the Court below shall confirm the provisional pre-arrest bail of the petitioner.

Accordingly, this application stands disposed of."



6. In terms of aforesaid order of this Court, the matter was sent to the District Mediation Centre, East Champaran, Motihari. The mediation proceeding appears failed between the parties with observation of the trial court through impugned order that it was failed at the petitioner's end and, therefore, in terms of the order passed in Cr. Misc. No.39945 of 2020 dated 19.07.2021, as aforesaid, the provisional pre-arrest bail of petitioner was cancelled.

7. In view of aforesaid background, the present petition has been preferred by petitioner/husband to quash/set aside the cancellation of provisional bail passed by learned S.D.J.M., Sikrahana at Dhaka, East Champaran.

8. During the course of hearing of present petition, both parties were directed to appear in person. Consequent upon, both parties appeared before this Court on 03.04.2025 and also today. Giving a length hearing to the parties in person in open court in presence of their advocates, it transpires that the O.P. No.2/wife is asking to execute a sale deed for 10 katha of land belongs to this petitioner, what he has as ancestral property. It is submitted by



petitioner/husband that he has only 17 katha of land, out of which, 7 katha is for her mother and for remaining 10 katha of land, he is willing to transfer 4 katha of land by way of gift/sale deed or by any other instruments in favour of O.P. No.2/wife. The core issue as transpired during hearing is dispute related with transfer of land in favour of O.P. No.2 by petitioner. The O.P. No.2 also admitted that petitioner having of 17 katha of land only. During the course of hearing, it also transpires that petitioner has never misused the privilege of bail.

9. Learned counsel appearing for the petitioner further submitted that imposing such onerous condition while granting bail is against the mandate of law as established by Hon'ble Supreme Court and in support of same, he relied upon the legal report of Hon'ble Supreme Court as available through **Sumit Mehta vs. State (NCT of Delhi)** reported in **(2013) 15 SCC 570** and also in **Shyam Singh vs. State through C.B.I.** reported in **(2006) 9 SCC 169**.

10. Considering the aforesaid facts/nature of accusation as to secure the end of justice, the impugned order



dated 16.02.2022 passed by learned S.D.J.M., Sikrahana at
Dhaka, East Champaran in connection with Mahila P.S. Case
No.10 of 2020, *qua* petitioner is hereby set aside/quashed.

11. Accordingly, the learned trial court is directed
to conform the provisional pre-arrest bail of the petitioner
with same bailors and bail bonds till conclusion of trial.

12. The application stands allowed.

13. Office is directed to send a copy of this order to
the learned trial court immediately.

(Chandra Shekhar Jha, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22-04-2025
Transmission Date	22-04-2025

