

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.841 of 2024

Arising Out of PS. Case No.-18 Year-2023 Thana- MAHILA P.S District- West Champaran

1. Amna Khatoon Wife of Late Sk. Bhikhari @ Late Shekh Bhikhari R/O Village- Barwa Kala, P.S.- Sathi, District- West Champaran
2. Sk Shikari @ Shikari Sheikh Son of Late Mohammad Hussain R/O Village- Barwa Kala, P.S.- Sathi, District- West Champaran
3. Musarrat Jahan Wife of Zakir Hussain R/O Village Baswariya, P.S. Cahutarwa, District West Champaran
4. Zakir Hussain Son of Late Nezamuddin R/O Village Baswariya, P.S. Cahutarwa, District West Champaran

... .. Petitioner/s

Versus

1. The State of Bihar
2. Haya Sadaf Wife of Mahtab Alam, Daughter of Raiful Azam R/O Village- Barwa Kala, P.S.- Sathi, District- West Champaran

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Bimlesh Kumar Pandey, Advocate
For the Opposite Party/s : Mr. Bharat Bhushan, APP

CORAM: HONOURABLE MR. JUSTICE SOURENDRA PANDEY
ORAL ORDER

3 20-01-2026 Heard the learned counsel for the petitioners and
learned APP for the State.

2. In the present application, the petitioners have
prayed for the following relief(s):-

*“That, this is an application for
quashing of the order dated 19.08.2023 passed in
ABP No. 1301/2023, by Learned Additional
District and Sessions Judge Ist, Bettiah, West
Champaran in connection with Bettiah (Mahila)*



P.S. Case No. 18/2023, whereby and where under the Learned Additional District and Sessions Judge 1st, Bettiah, West Champaran has heard and disposed off the bail application of the petitioners with certain observations and directions exceeding the jurisdiction U/S 438 Cr.P.C.”

3. The facts and circumstances giving rise to the present application is to the effect that an F.I.R. was registered by the informant alleging therein that the members of her matrimonial home started demanding Rs. 5,00,000/- and one Bolero car as dowry. It is further alleged that the petitioners and others threatened the informant to get her son remarried, if the informant does not fulfill the demand of dowry.

4. It is further alleged that the named accused persons, including the husband of the informant, tried to kill the informant and finally on 18.11.2022, all the above-named persons assaulted her, tore her clothes and snatched away her *streedhan* and ousted her from her matrimonial home. It is further alleged that the accused persons have got secretly married the husband of the informant with one Ishrat Khatun.

5. Learned counsel for the petitioners submits that the petitioners preferred anticipatory bail application being A.B.A.



No. 1301 of 2023 before the Court of Learned Additional District & Sessions Judge-1, Bettiah, West Champaran under section 438 Cr.P.C. which was allowed with certain directions, which is as under:

*“In view of the nature of allegation, both have two daughter from this marriage and there is still possibility of reconciliation, this Court would direct that if the petitioners surrenders in the court below within a period of **Six weeks** from today, and submits an undertaking to this effect that husband is ready to keep the informant with full dignity and decorum as his spouse at the time of his surrender, the court below, after issuing notice to Opposite party i.e. the informant **wife will grant provisional bail to the petitioners for a period of three months on sufficient amount of bond on own satisfaction.**”*

6. Learned counsel for the petitioners submits that imposing such condition of grant of bail only when the husband of the informant is willing to keep her as her legally married wife, amounts to literally rejecting the bail application as it was a categorical case of the petitioner that the husband was not



ready to keep the informant. It has been submitted that putting such unreasonable condition wherein there is no control of the petitioners is against the provisions of Section 438 of the CrPC.

7. Learned counsel for the petitioners further submits that the learned trial court also did not appreciate the fact that it was the informant who was not willing to live with the husband due to mismatch and also against the wishes of the victim.

8. It has further been submitted that the petitioners have falsely been implicated in this case only because they happen to be the relatives of the husband of the informant and only with a view to harass the entire family this case was lodged. It has thus been prayed that the condition imposed by the Court of learned Additional District & Sessions Judge-Ist, Bettiah, West Champaran may be set aside.

9. Learned counsel for the petitioners further refers to the order passed by the Hon'ble Supreme Court in Criminal Appeal Nos. 3198-3199 of 2023 passed in the case of **Munshi Sah v. the State of Bihar & Anr.** wherein the Hon'ble Supreme Court has held that “.....*In our opinion, the question of grant of bail to a co-accused person cannot made dependent upon surrender of another accused who is described as the main accused person in this case.*”



10. The learned APP for the State as well as the learned counsel appearing on behalf of the O.P. No. 2 submits that the conditions which were imposed by the learned trial court were deliberately made as petitioners were close relatives of the husband of the informant and therefore, the Court warranted that the petitioners also take efforts in order to settle the dispute and enable the husband of the informant and the informant to live together and lead a conjugal life.

11. Learned counsel for the O.P. No. 2 further submits that the petitioners were equally liable for the acts committed by the husband and there is a specific allegation against the petitioners to have tortured the informant and therefore such imposition of condition is not bad and therefore the present application is misconceived and fit to be set aside.

12. This Court finds that the petitioners were granted bail by the Court of learned Additional District and Sessions Judge-Ist, Bettiah, West Champaran, however, one condition was imposed which is as under:

“In view of the nature of allegation, both have two daughter from this marriage and there is still possibility of reconciliation, this Court would direct that if the petitioners surrenders in the court



*below within a period of **Six weeks** from today, and submits an undertaking to this effect that husband is ready to keep the informant with full dignity and decorum as his spouse at the time of his surrender, the court below, after issuing notice to Opposite party i.e. the informant **wife will grant provisional bail to the petitioners for a period of three months on sufficient amount of bond on own satisfaction.**”*

13. To the understanding of this Court, such imposition of condition of directing the petitioners to be released on provisional bail for a certain period only if the victim is accepted by her husband and they live together, amounts to literally rejecting the application, as no condition is to be imposed upon the petitioners which is dependent upon a third person.

14. This Court finds it paradoxical that on one hand the Court of learned Additional District and Sessions Judge- Ist, Bettiah, West Champaran, records the fact and submissions made on behalf of the petitioners noting the mediation having failed between the parties, as the husband of the informant was ready to register 3 *Kattha* land in the name of the informant and



also to give new house, but she was not ready and she wanted whole land of her husband.

15. Despite acknowledging such submissions made on behalf of the petitioners, imposing such a condition that the petitioners shall give an undertaking to the effect that the husband is ready to keep the informant with full dignity and decorum as spouse at the time of his surrender then the bail, that too provisional, would be granted to the petitioner for three months literally amounts to rejection of the bail application.

16. I find that the impugned conditions imposed by the learned Trial Court is bad in law and contrary to the settled law and therefore the same is set aside.

17. The matter is remitted back to the Court of learned Additional District and Sessions Judge- Ist, Bettiah, West Champaran who shall pass fresh orders imposing reasonable conditions taking into account various judicial pronouncements of the Hon'ble Supreme Court.

18. At this juncture, learned counsel for the petitioners submit that they have also filed anticipatory bail application being Cr. Misc. No. 68455 of 2023 before this Hon'ble Court and the same is kept pending till the disposal of the present application.



19. In view of the above, learned counsel for the petitioners undertakes to withdraw the aforesaid anticipatory bail application pending before this Hon’ble Court, in order to enable the learned trial court to pass a fresh order as directed by this Court in the present application.

20. The present application is allowed with the aforesaid observation.

(Sourendra Pandey, J)

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