

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL MISCELLANEOUS No. 34225 of 2020**

Arising Out of PS. Case No.-561 Year-2019 Thana- MUFFASIL District- West Champaran

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1. Nikita Kumari, aged about 34 years, Female Wife of Ranjan Kumar @ Ranjan Jha, Daughter of Nirmal Prasad Jaiswal @ Nirmal Jaiswal @ Nirmal Prasad, Resident of Sant Kabir Road, Banuchhpar, PS Banuchhpara OP, District West Champaran. At Present resident of Village Dharahara, PS Banmankhi, District Purnia.
2. Sudha Rani Jaiswal, aged about 65 years, Female Wife of Nirmal Prasad Jaiswal @ Nirmal Jaiswal @ Nirmal Prasad.
3. Nirmal Prasad Jaiswal @ Nirmal Jaiswal @ Nirmal Prasad, aged about 70 years, Male, Son of Late Harihar Prasad Jaiswal.
4. Niraj Jaiswal @ Niraj Nayan, aged about 45 years, Male Son of Nirmal Prasad Jaiswal @ Nirmal Jaiswal.  
Petitioner No. 2 to 4 are resident of Village Dharahara, PS Banmankhi, District- Purnia.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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**Appearance :**

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| For the Petitioner/s | : | Mr. Bimlesh Kumar Pandey, Advocate   |
| For the State        | : | Mr. Jagdhar Prasad, APP  |
| For the Informant    | : | Mr. Yogesh Chandra Verma, Senior Advocate with<br>Mr. Anand Kumar Mishra, Advocate |

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**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH**  
**ORAL JUDGMENT**

**Date : 20-09-2021**

The matter has been heard via video conferencing.

2. Heard Mr. Bimlesh Kumar Pandey, learned counsel for the petitioner no. 1, the sole petitioner after withdrawal of the petition on behalf of the petitioners no. 2 to 4; Mr. Jagdhar Prasad, learned Additional Public Prosecutor (hereinafter referred to as the 'APP') for the State and Mr. Yogesh Chandra Verma, learned



senior counsel along with Mr. Anand Kumar Mishra, learned counsel for the informant.

3. The petitioner no. 1 apprehends arrest in connection with Bettiah Muffasil (Banuchhapar) PS Case No. 561 of 2019 dated 05.10.2019, instituted under Sections 406, 420, 380 and 120B/ 34 of the Indian Penal Code.

4. The allegation against the petitioner, who is the wife of the informant is of concealing the fact of being already married and also taking huge amount of the informant which was not returned and thereafter that her brothers had abused and assaulted the informant and finally that the petitioner no. 1 and her other relatives had taken away jewellery worth Rs. 50 lakhs, Rs. 1 lakh cash and the son of the informant who is born to the petitioner no. 1, with them.

5. Learned counsel for the petitioner no. 1 submitted that the entire FIR is based on falsehood. It was submitted that it was the informant who was instrumental in the separation of the petitioner no. 1 from her first husband and, in fact, it was he who was pursuing the matter relating to her divorce. It was submitted that when the petitioner no. 1 had filed a case against her previous husband which was finally compromised on 17.01.2012. He submitted that thereafter the parties had separated and in fact, it



was the informant who had assured the petitioner no. 1 that they could marry and to his full knowledge, the marriage was performed between the petitioner no. 1 and the informant on 26.07.2012. Learned counsel submitted that the petitioner no. 1 had got, by way of alimony, about Rs. 7 lakhs from her previous husband and upon marriage, she had taken the money to the matrimonial home and the same was fully appropriated by the informant. Learned counsel submitted that continuously the demand for dowry/money kept on pouring from the informant and his relatives. It was submitted that later on, formal decree of divorce was also obtained between the petitioner no. 1 and her previous husband. Learned counsel submitted that on the previous occasion, an objection was raised by learned counsel for the informant with regard to maintainability of the present petition in view of processes under Sections 82 and 83 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Code') being issued against the accused, including the petitioner, in the present case. Learned counsel submitted that the Hon'ble Supreme Court in **Lavesh vs. State (NCT of Delhi), (2012) 8 SCC 730**, especially paragraph no. 10, which has clearly laid down that when the accused is 'absconding' and declared as 'proclaimed offender' there was no question of granting anticipatory bail. It



was submitted that in the same stroke, the Hon'ble Supreme Court has stated that when a person against whom a warrant had been issued and is 'absconding or concealing himself in order to avoid execution of warrant' and is declared as a 'proclaimed offender' in terms of Section 82 of the Code is not entitled the relief of anticipatory bail.

6. Learned counsel submitted that in the present case, the informant has filed a counter affidavit bringing on record the orders passed by the Court below which do not show that it has been held against the petitioner no. 1 that she is 'concealing herself and absconding' and further that she has not been declared a 'proclaimed offender'. Learned counsel submitted that in the case which the petitioner no. 1 has filed against the informant and his family members, being Bettiah Muffasil PS Case No. 693 of 2019 dated 13.12.2019, the Investigating Officer of the present case and the said case is the same person. It was submitted that the petitioner no. 1 is the informant of the other case and on 13.12.2019, the same Investigating Officer had taken the restatement of the petitioner no. 1, which clearly indicates that she was not trying to evade the process of law or absconding for the reason that the order of the Court below in the present case had already issued non-bailable warrant of arrest and the same was



handed over to the Investigating Officer on 05.12.2019 itself. Thus, learned counsel submitted that for the purposes of consideration of the prayer for anticipatory bail, as far as the instant case is concerned, there is no legal impediment to the same. For the same proposition, learned counsel relied upon the decisions of the Hon'ble Supreme Court in **State of MP v. Pradeep Sharma, (2014) 2 SCC 171**; Jharkhand High Court in **Mahendra Kumar Ruiya vs. The State of Jharkhand and Another (A.B.A. No. 4674 of 2012)** dated 27.06.2013; a coordinate Bench of this Court dated 07.02.2019 in Cr. Misc. No. 62208 of 2017 (**Shiv Shankar Prasad Sinha vs. The State of Bihar**) as also order dated 20.08.2020 of the High Court of Chhattisgarh, Bilaspur in MCRCA No. 19 of 2020 (**Suresh Chandra Khandelwal vs. State of Chhattisgarh**).

7. Learned counsel submitted that besides being a lady, the petitioner no. 1 also has an infant son to look after. It was submitted that the informant is out to humiliate the petitioner no. 1 and her family members as it was an intercaste love marriage which would be clear from the fact that by exerting undue influence on the police, he had got the petitioners no. 2 to 4, who are the parents and brother of petitioner no. 1, arrested.



8. Learned APP submitted that the allegation of cheating has been made against the accused, including the petitioner no. 1.

9. Learned counsel for the informant submitted that the present petition is not maintainable as processes under Sections 82 and 83 of the Code have been issued. However, he was not in a position to substantiate his contention, as from the orders brought on record of the Court below in the counter affidavit, there is no order to show that the petitioner no. 1 has been declared as a proclaimed offender. However, he further submitted that the conduct of the petitioner no. 1 is such that she does not deserve the privilege of anticipatory bail as she has suppressed the fact that she was already married before marrying the informant.

10. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that the petitioner no. 1 cannot be said to have evaded the process of law or concealed herself. The same Investigating Officer of both the cases, after obtaining non-bailable warrant of arrest against petitioner no. 1 in the present case, has taken restatement in the case filed by her after one week of receiving the non-bailable warrant of arrest, which clearly indicates that the petitioner no. 1 was available for any interrogation or otherwise which may have been required. Further, if the law being strict in



nature, requires its strict compliance also and in the present case, the Court has not come to a finding that the material which the Investigating Officer may have produced before the Court indicated that she was absconding or concealing herself to avoid execution of warrant of arrest and further, petitioner no. 1 has not been declared a proclaimed offender. Thus, the Court does not find that there is any legal bar for consideration of the present case on merits.

11. Coming to the merits also, the Court finds that since the petitioner no. 1 has performed intercaste Court marriage and there is an infant son born, the same is sufficient to indicate that the parties were well aware of the status of each other at the time of marriage. Thus, the Court is inclined to allow the prayer for pre-arrest bail.

12. However, any discussions in the present order shall not have any effect on the case of either side during trial.

13. According, in the event of arrest or surrender before the Court below within six weeks from today, the petitioner no. 1, namely, Nikita Kumari be released on bail upon furnishing bail bonds of Rs. 25,000/- (twenty five thousand) with two sureties of the like amount each to the satisfaction of the learned Chief Judicial Magistrate, Bettiah, West Champaran in Bettiah Muffasil



(Banuchhapar) PS Case No. 561 of 2019, subject to the conditions laid down in Section 438(2) of the Code of Criminal Procedure, 1973 and further that the petitioner no. 1 shall co-operate with the Court and police/prosecution. Failure to co-operate shall lead to cancellation of her bail bonds.

14. It shall also be open for the prosecution to bring any violation of the foregoing conditions by the petitioner no. 1, to the notice of the Court concerned, which shall take immediate action on the same after giving opportunity of hearing to the petitioner no. 1.

15. The petition stands disposed of in the aforementioned terms.

**(Ahsanuddin Amanullah, J.)**

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