

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.181 of 2025

Arising Out of PS. Case No.-747 Year-2023 Thana- ALAMGANJ District- Patna

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Pratik Shail @ Pratik Sail, Son of Sri Shailendra Kumar, Resident of 201,
Jainendra Enclave, Vishwasaraiya Nagar, P.S. - Danapur, District - Patna

... .. Petitioner/s

Versus

- 1. The State of Bihar through the Home Secretary, Government of Bihar, Patna
- 2. The Director General of Police, Bihar, Patna
- 3. The Senior Superintendent of Police, Bihar, Patna
- 4. The Assistant Superintendent of Police, Patna City Bihar
- 5. The Station House Officer, Alam Ganj, Police Station of District - Patna Bihar
- 6. Ashok Kumar, Son of Late Jagdish Prasad, Resident at 301, Block-C, Kailash Residency, Arya Samaj Mandir, Road No. 10, R.P.S. More, P.S. - Rupaspur, District - Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Ms. Nivedita Nirvikar, Sr. Advocate Mr. Madhumay Madhup, Advocate
For the Respondent/s	:	Mr. C. S. Sinha, Sr. Advocate Mr. Akhilesh Dutt Verma, Advocate
For the State	:	Mr. Ravi Bhardwaj, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
CAV JUDGMENT



Date : 18-04-2025

1. The petitioner is a suspended Judicial Officer in the cadre of Bihar Judicial Service. He has invoked Constitutional Writ Jurisdiction under Article 226 of the Constitution of India for the following reliefs:

“(i) For issuance of appropriate Writ/Writs, direction/directions or orders/order, quashing the Alam Ganj P. S. Case No. 747 of 2023, dated 18/08/2023, registered under sections 304-B & 34 of Indian Penal Code, (45 of 1860) on the basis of fardbyan by Ashok Kumar, son of Late Jagdish Prasad at Paras Hospital on 17/08/2023 at 14.45 hours, against the above-named petitioner.

(ii) To issue further appropriate writ, order or direction in the nature of mandamus commanding the Respondents not to take any coercive steps against the Petitioner in pursuance of Alam Ganj P.S. Case No. 747 of 2023, dated 18/08/2023 during pendency of this case.

(iii) For any other relief/reliefs, which this Hon'ble Court



may grant in general interest, that may be deemed appropriate and necessary in this case.”

2. It is pertinent to mention at the outset that marriage of the daughter of the informant (Respondent No. 6) was solemnized with the petitioner on 11th of May, 2022. She died in Paras Hospital, Patna on 17th of August, 2023 at about 02.45 p.m. After her death, the informant lodged a complaint to the SHO, Alam Ganj Police Station, on the basis of which Alam Ganj P. S. Case No. 747 of 2023 under Section 304B/34 of the Indian Penal Code was registered on 18th of August, 2023. The F.I.R. contained an allegation that after the lapse of one month of marriage of the daughter of the informant with the petitioner, he along with his parents and sister started assaulting the deceased on demand of balance amount of dowry to the tune of Rs. 20,00,000/-. She was threatened that she would not be able to live at her matrimonial home peacefully if the said amount of Rs. 20,00,000/- be not paid to the accused persons. The petitioner along with other accused persons increased the amount of torture upon the deceased daughter of the informant, when they came to know that she informed the



incident of physical and mental cruelty to the family members of her paternal home. It was also alleged that in the said marriage, the petitioner and his family members demanded in all Rs. 50,00,000/- as dowry. Out of which Rs. 22,00,000/- was paid in the form of a car valued at Rs. 20,00,000/- and gold ornaments of Rs. 2,00,000/- besides bronze and steel utensils etc. An amount of Rs. 8,00,000/- was paid to the accused at the time of Tilak ceremony. As per the demand of the accused persons, Rs. 20,00,000/- was due towards the arrears dowry amount, for which, the accused persons including the petitioner subjected the daughter of the informant with untold torture. On 13th of August, 2023, the father of the deceased talked to the father of the petitioner and inquired about his daughter. He informed him that everything was well in respect of his daughter. Subsequently, the informant got an information that on 15th of August, 2023 at about 04.12 p.m. that her daughter was admitted to a private nursing home under the name and style of Universal Emergency Hospital and Trauma Centre Private Limited at Kumhrar, Patna with the history of intermittent vomiting since two months with



severe left sided periumbilical pain. The patient had history of loose motion and vomiting from two days back from the date of her admission. She was diagnosed with abdominal tuberculosis on the basis of an ultra sonography report done from an institute outside the said nursing home and hypovolaemic shock. The patient was discharged on Leave Against Medical Advice (LAMA) by her family members from her paternal side on 15th of August, 2023 at about 10.12 p.m. At the time of discharge, the patient was stable and vitals were maintained. It was further stated by the informant that he admitted his daughter to Paras, HMRI on 16th of August, 2023 at about 12.44 a.m. and she died in the said hospital on 17th of August, 2023 at about 10.44 a.m. It is alleged by the informant that the petitioner and his family members, named in the F.I.R., committed murder of his daughter on demand of dowry.

3. In the instant writ petition, it is stated by the petitioner that the daughter of the informant died due to abdominal tuberculosis which was aggravated as she did not disclose her ailment at an early stage. When the petitioner started vomiting with severe left sided periumbilical pain on



15th of August, 2023, the petitioner came to know about her medical condition and she was immediately taken to the nearby doctor by the petitioner. The Doctor examined the wife of the petitioner and prescribed several medical tests. The petitioner got those medical tests conducted immediately and came to know that she had been suffering from chronic abdominal tuberculosis and other complications arising out of it. She was immediately admitted to Universal Emergency Hospital and Trauma Centre Private Limited at Kumhrar, Patna. During diagnostic test, wife of the petitioner was found suffering from the following diseases:

***“Increased serum levels –
Viral hepatitis, infectious,
mononucleosis, typhoid fever, cirrhosis
of liver and certain malignant tumours,
tuberculosis.***

***Increased fluid levels –
Tuberculosis, bacterial infections,
lymphoproliferative disorders and
rheumatologic diseases***

***Decreased levels – Type two
diabetes, mellitus and biliary tract
diseases.”***



4. The petitioner also informed the parents of the deceased about her ill health at around 10.50 a.m. on 15th of August, 2023. They came to the Universal Emergency Hospital and Trauma Centre Private Limited at Kumhrar, Patna, where the deceased was admitted, and forcibly took her away against the advice of the doctor and admitted her to Paras, HMRI, where the wife of the petitioner breathed her last on 17th of August, 2023 at about 10.44 a.m. In the death summary, issued by Paras, HMRI, it was clearly opined that the cause of death of the wife of the petitioner was "infective pathology likely abdominal tuberculosis". The medical documents issued by the Universal Emergency Hospital and Trauma Centre Private Limited at Kumhrar, Patna coupled with the post-mortem and FSL reports clearly suggest that the death of the wife of the petitioner was not caused under any unnatural circumstances and she died of abdominal tuberculosis from which she was suffering. There was no contribution of the petitioner in the death of his wife. It is, therefore, submitted by the petitioner that police registered a false case under Sections 304B/34 of the Indian Penal Code against him and his family members on



the basis of a false and concocted story submitted by the informant in his *fard beyan*. The petitioner also submitted that he did not demand or take any dowry before, during and after her marriage. For the reasons stated above, the petitioner has prayed for quashment of F.I.R. being Alam Ganj P. S. Case No. 747 of 2023.

5. By filing an Interlocutory Application, the petitioner claims the following additional reliefs:

“i) For issuance of appropriate Writ/Writs, direction/directions or orders/order, quashing the order dated 12/12/2024, contained in Annexure – P/1, whereby and whereunder the Court of Learned ACJM-VI has passed an order issuing non-bailable warrant (NBW) against the petitioner, in connection with Alam Ganj P.S. Case No. 747 of 2023, dated 18/18/2023, which has been registered under Sections 304-B and 34 of the IPC (45 of 1860), based on the application filed by the Investigating Officer.

ii) For issuance of appropriate orders, direction or writ for necessary relief/reliefs, order/orders,



direction/directions for which the petitioner is entitled in the eye of law as well as on the facts of the case.”

6. It is on record that after institution of the case, the petitioner filed an application under Section 438 of the Cr.P.C. before this Court. A Co-ordinate Bench of this Court rejected the prayer for anticipatory bail. The said order was affirmed up to the Hon'ble Supreme Court. Under the aforesaid background, the Investigating Officer made an application before the learned A.C.J.M.-VI, Patna City, praying for issuance of non-bailable warrant against the petitioner. The learned Magistrate recorded in his order, dated 12th of December, 2024 that in Cr. Misc. No. 79855 of 2023, prayer made by the accused for anticipatory bail was rejected by this Court and he was directed to surrender before the Court of learned Jurisdictional Magistrate within eight weeks from the date of the order. Since the accused failed to surrender, the learned Magistrate issued non-bailable warrant against him.

7. It is submitted by the petitioner that institution of criminal case against the petitioner was brought to the notice of this Court in its administrative side.



This Court in exercise of its power conferred by sub-rule 1(c) of Rule 6 of Bihar Judicial Service (Classification, Control and Appeal) Rules, 2020 placed the petitioner under suspension with immediate effect. This Court further ordered that during the period that the order of suspension remained in force, the petitioner shall not leave the station without obtaining prior permission.

8. It is contended by the petitioner that the above-mentioned order was passed by the High Court in its administrative side on 10th of September, 2024 and in strict compliance of the said order, the petitioner has been residing at his place of posting.

9. It is also stated that the Assistant Superintendent of Police, Patna City sought for a clarification and guidance of this Court about the next course of action, to be taken by the Investigating Authority, when the judicial order passed by this Court rejecting the anticipatory bail and directing the petitioner to surrender before the Court of Jurisdictional Magistrate within eight weeks from the date of the order and the administrative order of the High Court directing him not to leave the



jurisdiction of his place of posting run counter to each other, but the learned Registrar General has not sent any clarification as yet. The petitioner has also annexed the FSL report of the deceased, which was sent to the Court of the learned A.C.J.M., Patna City on 20th of September, 2024. The result of the examination of the viscera of the deceased states : -

"On chemical and TLC examination, Metallic, Alkaloidal Glycosidal, Pesticidal and Volatile poison could not be detected in the contents of glass jar as described above".

10. Thus, it is contended by the petitioner that initial death report submitted by the Medical Officers of Paras, HMRI, Patna, the post-mortem report and the FSL report of the deceased do not suggest her death in any unnatural circumstance. She died of abdominal tuberculosis, resulting in failure of heart.

11. Therefore, offence under Sections 304/34 of the Indian Penal Code does not attract against the petitioner and the allegation made in the F.I.R. being *mala fide*, baseless and false on the face of the record, is liable to be



quashed.

12. The writ petition is hotly contested by the Private Respondent No. 6, who is the informant of Alam Ganj P. S. Case No. 747 of 2023.

13. On 6th of February, 2025, The Respondent No. 6 filed a rejoinder on affidavit, stating, inter alia, that previously the petitioner filed an application under Section 482 of the Cr.P.C. for quashment of F.I.R. The said application was registered as Cr. Misc. No. 50879 of 2024. A Co-ordinate Bench of this Court vide order, dated 29th of July, 2024, rejected the said application under Section 482 of the Cr.P.C. The instant writ petition is filed for the same relief. Accordingly, the writ petition is not maintainable.

14. It is also contended on behalf of contesting respondent that the petitioner's anticipatory bail was rejected and he was directed to surrender before the learned Jurisdictional Magistrate within eight weeks from the date of the order passed by this Court in Cr. Misc. No. 79855 of 2023. The said order was affirmed by the Hon'ble Supreme Court in SLP (Cri) No. 9887 of 2024. Subsequently, the High Court in its administrative side issued an order of



suspension of the petitioner on 10th of September, 2024. In spite of the rejection of the prayer for anticipatory bail, directing the petitioner to surrender before the court below within eight weeks from the date of the said order, the petitioner preferred to disobey the order showing subsequent administrative order issued by the High Court directing him not to leave Bikramganj without the leave of the Court where he was posted.

15. It is also submitted by the contesting respondent that in order to put pressure upon the informant and his family members, the petitioner, while under suspension, instituted a Complaint Case No. 715 of 2024 on 22nd of November, 2024 against the Respondent No. 6 and his family members for the offences under Sections 304, 304A, 323, 504 and 506 of the Indian Penal Code, alleging, inter alia, that his wife died due to gross negligence and wrongful action on the part of the accused person / Respondent No. 6 and his family members by forcibly shifting her wife from the Universal Emergency Hospital and Trauma Centre Private Limited at Kumhrar, Patna to Paras, HMRI in spite of the protest of the petitioner.



16. On the basis of the said complaint, the learned A.C.J.M.-II, Bikramganj, Rohtas took cognizance of offence against the Respondent No. 6 and his family members under the above-mentioned penal provisions vide order dated 29th of November, 2024. The Respondent No. 6 reiterated his statement made in the F.I.R. that his daughter Chandani Chandra, since deceased, was subjected to physical and mental torture by the petitioner and his family members on demand of dowry amount to Rs. 20,00,000/-, which remained due on the occasion of marriage.

17. It is also stated that the accused persons demanded Rs. 50,00,000/- in cash by way of dowry and a four wheeler, amounting to Rs. 20,00,000/- (MG Hector), besides gold jewelry of Rs. 2,00,000/- and utensils etc.

18. It is pertinent to note her that marriage of the petitioner was solemnized on 11th of May, 2022. The Respondent No. 6 purchased a car (MG Hector), bearing Registration No. BR01FU-6196 by taking loan in her elder daughter's name who was eligible for getting bank loan, as she had her own business of interior decoration under the name and style of Vintage Home Decor.



19. The Respondent No. 6 submitted series of documents, showing payment of 28,00,000/-, withdrawing money from different bank accounts and taking bank loan in the name of his elder daughter from the bank.

20. It was alleged in *fard beyan* that the Respondent No. 6 paid dowry of Rs., 28,00,000/- by cash and Rs. 2,00,000/- in the form of ornaments and remaining 20,00,000/- was due. The Respondent No. 6 has filed series of CDR which took place between the father of the petitioner and Respondent No. 6 regarding demand of car after solemnization of marriage, delivery of the said vehicle etc. and also between the petitioner, his wife (since deceased) and Respondent No. 6, demanding further dowry after marriage.

21. It is further submitted by the Respondent No. 6 that conversation over mobile phone and call details report would sufficiently prove that the deceased was under physical and mental cruelty for illegal demand of dowry.

22. It is alleged by the Respondent No. 6 that neither the petitioner nor his family members informed that his daughter was admitted to hospital. He came to know



from another source about hospitalization of his daughter. After knowing the said fact, the Respondent No. 6 with his family members immediately rushed to Universal Emergency Hospital and Trauma Centre Private Limited at Kumhrar, Patna and found his daughter in a critical condition. He requested the hospital authority to discharge her daughter on LAMA, but the hospital authority initially refused to discharge the patient, being influenced by the petitioner, who was posted as Judicial Magistrate at Patna City Court at the relevant point of time. Subsequently, by the intervention of police, the victim was discharged in a very critical condition and she was admitted to Paras, HMRI, Patna for medical treatment, where she died on 17th of August, 2023 at Paras, HMRI.

23. It is further alleged by the Respondent No. 6 that the petitioner exerted his influence in getting a concocted medical report, dated 22nd of August, 2023, as to the condition of the deceased when she was discharged. Subsequently, during investigation, a substantial portion of the discharge certificate was changed by making necessary corrections as hereunder:



“1. Pulse has been mistakenly mentioned 41 MPM instead of 101 MPM.

2. SPO2 has been mistakenly mentioned on room air instead of 02 support (6 Lit/min).

3. Inj. Metron 100 ml. had been mistakenly mentioned instead of inj. Traxol-S1.5 gm.

4. P/A has been mistakenly mentioned rigidity +nt instead of rigidity-nt.”

24. The Respondent No. 6 further alleged that the petitioner is still exerting his influence upon the Investigating Officer and local police and under his influence, till date, the police did not seize the mobile phone to ascertain the authenticity of the call details report, submitted by him, under Section 65B of the Evidence Act. Several other objections were raised by the Respondent No. 6 regarding negligence committed by the Medical Officers attached to Universal Emergency Hospital and Trauma Centre Private Limited at Kumhrar, Patna and the manner in which the Respondent No. 6 managed to collect money to meet the illegal demand of dowry by the petitioner and his family members.



25. On 5th of March, 2025, the Respondent No. 6 filed a supplementary counter affidavit, stating, inter alia, that on 15th of August, 2025, the Medical Officer recorded in the case summary as mentioned hereinbelow:

“Case-Summary

This is to certify that patient's name Mrs. Chandani Chandra, aged-31/ female, W/o Mr. Pratik Shail, Son of Mr. Hailendra Kumar, Address-301, Sri Kunj Apartment, Bajrangpuri, P.O. Gulzarbagh, Patna-800007 had admitted in this hospital with IPD No. 240 & adm. Reg. no. 2671 in ICU on 15.08.2023 at 16.12 P.M. under Dr. S.K. Astik, MD with c/o amenorrhea since 2 months, Intermittent vomiting since 2 months and severe Lt. sided par umbilical pain since yesterday.

H/o loose motion and vomiting 2 days back.

After examination the patient, we have recorded followings:-

BP= non recordable (NR), pluse 41bpm. spo2=95% on room air, tenderness & rigidity all over, pallor (+), Icterus (-), cyanosis(-) & edema(-)

After these finding we had to



fluid resuscitations and medications her BP had come up to 110/70 mm Hg and pulses 116 bpm with spo2 96%

The following medications given- Inj. meropenem 1 mg., Inj. metron 100 ml., Inj. ondem, Inj. tramadol 1 amp. I.V. infusion Heamaccele 500 ml. (stat) Inj Dilon (sos), Tab 4FDC/ Akurit-4 2 tab OD in e/s. Tab benadon 40 mg. ½ tab OD with Inj. streptomycin 0.75 gm. I.M., IVF RL and Isolyte-m

Diagnosis was made:- Abdominal Tuberculosis (as per USG W/A is outside hospital report) and Hypovolemic shock.

Patient was discharged on LAMA (Leave Against Medical Advice) by her family member from paternal side (her father, her mother, her brother and her sisters).

The LAMA was issued on 15.08.2023 at 10.12 P.M. by this hospital.

During discharge the patient was stable and vitals maintained.”

26. On 22nd of August, 2023, the Medical Officer of Universal Emergency Hospital and Trauma Centre Private Limited at Kumhrar, Patna submitted another



case summary, which states as hereunder: -

“Case Summary

This is to certify that patient's name Mrs. Chandani Chandra, age-31/female, w/o- Mr. Pratik Shall, s/o- Mr. Shailendra Kumar, add-301, Sri kunj apartment, Bajrangpuri, p.o- Gulzarbagh, Patna-800007 had admitted in this hospital with IPD No.-240 & Adm. Reg no.-2671 In ICU on 15/08/2023 at 16:12pm under Dr. S K Astik, MD with c/o Amenorrhea since 2 months, Intermittent vomiting since 2 months and severe lt. sided perumbilical pain since yesterday.

H/o-loose motion and vomiting 2days back.

After examination the patient, we have recorded followings:

*BP=non-recordable(NR),
pulse=41 bpm,spo2=95% on room air,
RBS-93mg/dl,chest-B/L NVBS, cvs = 51
&52 presented, P/A= tenderness & rigidity
all over, pallor(+), Icterus(-),
cyanosis(-)&edema(-).*

*After these finding we had to fluid
resuscitations and medications her BP had
come up to 110/70 mm Hg and pulses*



116bpm with Spo2 96%

The following medications given:

*Inj. meropenem 1gm, Inj. metron 100ml,
Inj. ondem, inj. tramadol 1amp, l.v. infusion
Heamaccele 500ml (stat) inj Dilona (sos),
Tab 4FDC/Akurlt-42tab OD In e/s Tab
benadon 40mg 1/2 tab OD with
inj. streptomycin 0.75gm I.m, IVF RL and
Isolyte-m*

*Diagnosis was made: Abdominal
Tuberculosis (as per USG W/A is out side
hospital report) and Hypovolemic shock.*

*Patient was discharged on LAMA
(leave against medical advice) by her
family member from paternal side (her
father, her mother, her brother and her
sisters)*

*The LAMA was issued on
15/08/2023 at 10:12 PM by this hospital.*

*During discharge the patient was
stable and vitals maintained.”*

27. And finally, on 19th of September, 2023, the
said hospital submitted the third case summary, which states
as follows:

“TO WHOM IT MAY CONCERN

*This is to certify that Mrs.
Chandani Chandra, age-31/F, wife of Mr.*



*Pratik Shail, Son of Mr. Shailendra Kumar,
Add- 301 Sri Kunj Apartment, Bajrangpuri,
P.O. Gulzarbagh, District Patna-7 had
admitted in this hospital on 15.09.2023 at
4.15 P.M. with c/o*

-amenorrhea since 2 months.

*-intermittent vomiting since 2
months*

*-severe left sided per umbilical
pain for yesterday.*

*-H/O loose motion and vomiting
for 2 days back*

*-she had admitted under Dr.
S.K. Astik (MD. MED)*

*On examination the following
things finded.....*

*Pallor+, icterus-, cyanosis-,
edema-*

*BP=NR (non recordable), HR/
Pulse-101 bpm, SPO2-95% on 02 suport (6
lit/ min), chest (B/L clear A/E +nt, no added
sound +nt), CVS= S1 & S2+nt, P/A-(Liver
not enlarged, spleen not palpable, bowel
sound sluggish, abdomen distended &
tender all over +nt., as cites++).*

*The LAMA was issued on
15.08.2023 at 10.12 P.M. by this hospital.*

Post script:-



Some typographical errors had occurred in the earlier issued case summary to the attendant of the patient on 22.08.2023 which are as under:-

1) Pulse has been mistakenly mentioned 41 BPM instead of 101 BPM.

2) SPO2 has been mistakenly mentioned on room air instead of O2 support (6lit/ min).

3) Inj. Metron 100 ml. had been mistakenly mentioned instead of inj. Traxol-S 1.5 gm.

4) P/A has been mistakenly mentioned rigidity +nt instead of rigidity-nt.”

28. It is alleged by the Respondent No. 6 that there are material contradictions in all the three case summaries, issued by the Medical Officers attached to Universal Emergency Hospital and Trauma Centre Private Limited at Kumhrar, Patna.

29. The Respondent No. 6 made additional stories detailing out tortures and threat inflicted upon the deceased by the petitioner.

30. It is also stated by the Respondent No. 6 that even after rejection of his prayer for anticipatory bail by the



Hon'ble Supreme Court, the petitioner preferred a fresh anticipatory bail bearing ABP No. 2518 of 2024 before the learned Sessions Judge, Patna. The said application was heard by the learned Additional Sessions Judge -1 at Patna and vide order dated 27th of January, 2025, his prayer for anticipatory bail was rejected.

31. That on 2nd of April, 2025, the Respondent No. 6 filed third supplementary affidavit, annexing a comprehensive review of imaging manifestations of abdominal tuberculosis and its mimics from a medical journal titled as Clinical Imaging 76 (2221).

32. It is important at this stage to note that no counter affidavit has been filed on behalf of the State-Respondents. On being asked by this Court, only translated copy of the case-diary was produced by the learned Advocate appearing on behalf of the State-Respondents. Thus, contention of the petitioner in the writ petition is not controverted in writing by filing any counter affidavit by the State-Respondents.

33. On careful perusal of the writ petition and rejoinder filed by Respondent No. 6 as well as the case-



diary, following undisputed circumstances are revealed: -

(A) Marriage of the petitioner was solemnized with the deceased according to Hindu rites and ceremonies on 11th of May, 2022.

(B) The wife of the writ petitioner, since deceased, was admitted to Universal Emergency Hospital and Trauma Centre Private Limited at Kumhrar, Patna on 15th of August, 2023.

(C) She was shifted by her parents and other family members of her paternal home to Paras, HMRI, Patna on 16th of August, 2023.

(D) She died on 17th of August, 2024 at Paras, HMRI, Patna at about 10.44 a.m.

(E) On 18th of August, 2023, one Ashok Kumar (Respondent No. 6), father of the deceased, made a statement before the Police, on the basis of which Alam Ganj P.S. Case No. 747 of 2023 was registered against the petitioner and others under Sections 304B/34 of the Indian Penal Code.

(F) The petitioner previously filed an application for anticipatory bail before the High Court at Patna being



Cr. Misc. No. 79855 of 2023 and the said application was rejected by a Coordinate Bench of this Court on 12.07.2024.

(G) The petitioner challenged the said order of rejection of anticipatory bail before the Hon'ble Supreme Court by filing Special Leave Petition (Cri) No. 9887 of 2024, which was also dismissed subsequently.

(H) While rejecting the anticipatory bail, the petitioner was directed to surrender before the learned Jurisdictional Magistrate within eight weeks, but till date he did not surrender.

(I) The case-diary reveals that Sr. Superintendent of Police sought for an opinion / instruction of the Registrar General, Patna High Court on 19th of August, 2023 with regard to the course of action to be taken by the Police Officer against the petitioner as he is a Judicial Magistrate posted at Bikramganj.

(J) Though, this Court does not find any such opinion / instruction of the Registrar General, High Court at Patna on behalf of the High Court administration, it is, however, ascertained from a document annexed by the petitioner in his writ petition that the High Court in its



administrative side passed an order of suspension against the petitioner and directed him not to leave his place of posting at Bikramganj.

(K) It further reveals from the record that the petitioner filed an application under Section 482 of the Cr.P.C., making the same prayer for quashing the F.I.R., dated 18th of August, 2023 vide Alam Ganj P. S. Case No. 747 of 2023 and the said application under Section 482 of the Cr.P.C. (Cr. Misc. No. 50879 of 2024) was rejected by a Coordinate Bench of this Court.

34. Under such factual background, the following issues have evolved for adjudication:

(i) Whether the instant writ petition under Article 226 of the Constitution of India with a prayer for quashment of F.I.R. is maintainable in view of the same prayer having been rejected previously under Section 482 of the Code of Criminal Procedure, 1973.

(ii) Whether the Court can consider at this stage of investigation, if prima facie case under Section 304B/34 of the Indian Penal Code has been made out against the petitioner from the materials collected in the



case-diary.

(iii) Whether this Court can come to a finding at this stage with regard to the cause and nature of death of the wife of the petitioner on the basis of medical documents collected and produced by the parties for consideration.

(iv) Whether the impugned F.I.R. can be quashed on the basis of materials on record.

35. Issue No. (i) – Mrs. Nivedita Nirvikar, learned Sr. Advocate appearing on behalf of the petitioner submits that the instant writ petition is maintainable in spite of previous application for quashing the F.I.R. under Section 482 of the Cr.P.C. was rejected by a Coordinate Bench of this Court.

36. In support of her contention, the learned Sr. Advocate refers to a decision of the Hon'ble Supreme Court in the case of *Imran Pratapgadhi v. State of Gujarat & Anr.*, reported in *2025 INSC 410*. In this case, police registered F.I.R. against the appellant for the offences punishable under Sections 196, 197 (1), 302, 299, 57 and 3(5) of the Bharatiya Nyaya Sanhita, 2023 (“the BNS” for



short) on the basis of a complaint made by the 2nd Respondent. The appellant moved Gujarat High Court, praying for quashing the F.I.R. initially under Section 528 of the BNS read with Article 226 of the Constitution of India. The High Court rejected the said application on the ground that the investigation is at a nascent stage. In paragraph 37 of the aforesaid report, it is held by the Hon'ble Apex Court : -

“37. We fail to understand how the High Court concluded that the message was posted in a manner that would certainly disturb social harmony. Thereafter, the High Court gave a reason that the investigation was at a nascent stage. There is no absolute rule that when the investigation is at a nascent stage, the High Court cannot exercise its jurisdiction to quash an offence by exercising its jurisdiction under Article 226 of the Constitution of India or under Section 482 of the CrPC equivalent to Section 528 of the BNSS. When the High Court, in the given case, finds that no offence was made out on the face of it, to prevent abuse of the process of law, it can always interfere even



though the investigation is at the nascent stage. It all depends on the facts and circumstances of each case as well as the nature of the offence. There is no such blanket rule putting an embargo on the powers of the High Court to quash FIR only on the ground that the investigation was at a nascent stage. If such embargo is taken as an absolute rule, it will substantially curtail the powers of the High Court which have been laid down and recognised by this Court in the case of State of Haryana v. Bhajan Lal - 1992 Supp (1) SCC 335.”

37. Next judgment referred by the learned Sr. counsel for the petitioner in support of her contention is ***Superintendent and Remembrancer of Legal Affairs, West Bengal v. Mohan Singh & Ors.***, reported in ***(1975) 3 SCC 706***. In paragraph no. 2 of this decision, Hon'ble Mr. Justice P. N. Bhagwati, speaking on behalf of the Bench, held as hereunder: -

“2. The main question debated before us was whether the High Court had jurisdiction to make the Order, dated 7th April, 1970 quashing the proceeding



against Respondents Nos. 1, 2 and 3 when on an earlier application made by the 1st respondent, the High Court had by its Order dated 12th December, 1968 refused to quash the proceeding. Mr. Chatterjee on behalf of the State strenuously contended that the High Court was not competent to entertain the subsequent application of Respondents Nos. 1 and 2 and make the Order dated 7th April, 1970 quashing the proceeding, because that was tantamount to a review of its earlier Order by the High Court, which was outside the jurisdiction of the High Court to do. He relied on two decisions of the Punjab and Orissa High Courts in support of his contention, namely, Hoshiar Singh v. The State and Namdeo Sindhi v. The State . But we fail to see how these decisions can be of any help to him in his contention. They deal with a situation where an attempt was made to persuade the High Court in exercise of its revisional jurisdiction to reopen an earlier drctet passed by it in appeal or in revision finally disposing of a criminal proceeding and it was held, that the High Court had no, jurisdiction to revise its earlier Order, because the power



of revision could be exercised only against an Order of a subordinate Court. Mr. Chatterjee also relied on a decision of this Court in U. J. S. Chopra v. State of Bombay where M. H. Bhagwati, J., speaking on behalf of himself and Imam, J., observed that once a judgment has been pronounced by the High Court either in exercise of its appellate or its revisional jurisdiction, no review or revision can be entertained against that judgment and there is no provision in the Criminal Procedure Code which would enable the High Court to review the same or to exercise revisional jurisdiction over the same. These observations were sought to be explained by Mr. Mukherjee on behalf of the first respondent by saying that they should not be read as laying down any general proposition excluding the applicability of Section 561A in respect of an Order made by the High Court in exercise of its appellate or revisional jurisdiction even if the conditions attracting the applicability of that Section were satisfied in respect of such Order, because that was not the question before the Court in that case and the Court was



not concerned to inquire whether the High Court can in exercise of its inherent power under Section 561A review an earlier Order made by it in exercise of its appellate or revisional jurisdiction. The question as to the scope and ambit of the inherent power of the High Court under Section 561A vis-a-vis an earlier Order made by it was, therefore, not concluded by this decision and the matter was res Integra so far as this Court is concerned. Mr. Mukherjee cited in support of this contention three decisions, namely, Raj Narain v. The State , Lai Singh v. The State. and Ram Vallabh v. State of Bihar . It is, however, not necessary for us to examine the true effect of these observations as they have no application because the present case is not one where the High Court was invited to revise or review an earlier Order made by it in exercise of its revisional jurisdiction finally disposing of a criminal proceeding. Here, the situation is wholly different. The earlier application which was rejected by the High Court was an application under Section 561A of the CrPC to quash the proceeding and the High Court rejected it on the



ground that the evidence was yet to be led and it was not desirable to interfere with the proceeding at that stage. But, thereafter, the criminal case dragged on for a period of about one and half years without any progress at all and it was in these circumstances that respondents Nos. 1 and 2 were constrained to make a fresh application to the High Court under Section 561-A to quash the proceeding. It is difficult to see how in these circumstances it could ever be contended that what the High Court was being asked to do by making the subsequent application was to review or revise the Order made by it on the earlier application. Section 561-A preserves the inherent power of the High Court to make such Orders as it deems fit to prevent abuse of the process of the Court or to secure the ends of justice and the High Court must, therefore, exercise its inherent powers having regard to the situation prevailing at the particular point of time when its inherent jurisdiction is sought to be invoked. The High Court was in the circumstances entitled to entertain the subsequent application of Respondents Nos. 1 and 2 and consider whether on the



facts and circumstances then obtaining the continuance of the proceeding against the respondents constituted an abuse of the process of the Court or its quashing was necessary to secure the ends of justice. The facts and circumstances obtaining at the time of the subsequent application of respondents Nos. 1 and 2 were clearly different from what they were at the time of the earlier application of the first respondent because, despite the rejection of the earlier application of the first respondent, the prosecution had failed to make any progress in the criminal case even though it was filed as far back as 1965 and the criminal case rested where it was for a period of over one and a half years. It was for this reason that, despite the earlier Order dated 12th December, 1968, the High Court proceeded to consider the subsequent application of respondents Nos. 1 and 2 for the of deciding whether it should exercise its inherent jurisdiction under Section 561 A. This the High Court was perfectly entitled to do and we do not see any jurisdictional infirmity in the Order of the High Court. Even on the merits, we find that the Order



of the High Court was justified as no prima facie case appears to have been made out against respondents Nos. 1 and 2.”

38. On the question as to whether successive application under Section 482 of the Cr.P.C. for quashing the F.I.R. is maintainable or not, the Hon'ble Supreme Court in ***Anil Khadkiwala v. State (Government of NCT of Delhi) & Anr.***, reported in ***2019 INSC 830***, followed its decision in Mohan Singh (supra) and held in paragraph no. 11 as hereunder: -

“11. The Company, of which the appellant was a Director, is a party respondent in the complaint. The interests of the complainant are therefore adequately protected. In the entirety of the facts and circumstances of the case, we are unable to hold that the second application for quashing of the complaint was not maintainable merely because of the dismissal of the earlier application.”

39. In ***Vinod Kumar, IAS v. Union of India & Ors., W.P. (Criminal) No. 255 of 2021***, decided on 29th of June, 2021, it is held by the Hon'ble Supreme Court that the law on point as held by this Court in the case of



“Superintendent and Remembrancer of Legal Affairs, West Bengal v Mohan Singh & Ors.”, reported in (1975) 3 SCC 706, is clear that dismissal of an earlier 482 petition does not bar filing of subsequent petition under Section 482 Cr.P.C., in case the facts so justified.

40. Referring to the above-mentioned decisions, it is submitted by the learned Sr. Advocate, appearing on behalf of the petitioner that a Coordinate Bench of this Court while dismissing an application under Section 482 of the Cr.P.C. did not consider the medical documents, which were subsequently received by the petitioner, establishing the fact that even prima facie no case under Section 304B of the I.P.C. is made out. On subsequent development, on the basis of case summary of the deceased prepared by the medical consultant of Universal Emergency Hospital and Trauma Centre Private Limited at Kumhrar, Patna, death report issued by Paras, HMRI, Patna, copy of post-mortem report, copy of FSL report, the petitioner has filed the instant application under Article 226 of the Constitution of India with a prayer to quash the F.I.R. under Sections 304B/34 of the Indian Penal Code. Therefore, the instant



writ petition is well maintainable before this Court.

41. Mr. Akhilesh Dutt Verma, learned Advocate, appearing on behalf of Respondents strenuously argues that the instant writ petition is not maintainable as the previous application for the same relief was quashed by a Coordinate Bench of this Court. The present writ petition is in the nature of review of the previous order of quashing the F.I.R. passed by a Coordinate Bench. Therefore, he has raised serious objection against the maintainability of the writ petition.

42. On due consideration of the submissions made by the learned counsels for the parties and taking into account the aforesaid ratio laid down by the Hon'ble Supreme Court in the decisions recorded hereinabove, this Court comes to an irresistible conclusion that the instant application under Article 226 of the Constitution of India is maintainable under the subsequent facts and circumstances of this case.

43. Issue No. (i) is thus decided, holding the instant writ petition maintainable.

44. **Issue Nos. (ii), (iii) and (iv)** – All these issues



are taken up together as they are interconnected and brevity of discussion leads the Court to decide the above-mentioned issues together.

45. Section 304 B of the Indian Penal Code runs thus: -

“304B. Dowry death. -- (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.

Explanation. For the purposes of this sub-section, "dowry" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.”



46. Before I proceed to test the merit of the rival submissions, it would be useful to state that to constitute "Dowry Death" punishable under Section 304B of the Indian Penal Code, following ingredients must be satisfied:-

(a) Death of a woman must have caused by any burn or bodily injury or must have occurred otherwise than normal circumstances.

(b) Such death must have occurred within seven years of her marriage.

(c) Soon before such death, she must have been subjected to cruelty or harassment by her husband or any relative of her husband.

47. Bearing the aforesaid ingredients of offences under Section 304B of the Indian Penal Code, let me recapitulate the case made out by the Respondent No. 6 in his F.I.R.

48. It is stated by the informant that at the time of marriage, the petitioner and his family members demanded a sum of Rs. 50,00,000/- in cash and one four-wheeler car. It is further found from the F.I.R. as well as the case-diary that on the date of Tilak ceremony, the father of the



deceased paid a sum of Rs. 8,00,000/-. Next, on the date of marriage, he paid Rs.20,00,000/- in cash and gold ornaments, amounting to Rs. 2,00,000/-. Thus, out of the 50,00,000/-, he altogether paid 30,00,000/- towards dowry. The Respondent No. 6 in his rejoinder has filed Call Details Report (CDR) along with transcription of conversation between the father of the petitioner and the father of the deceased, demanding delivery of a car and the father of the petitioner was satisfied when he came to know that the father of the deceased purchased a car (MG Hector) for the petitioner from Ranchi in the State of Jharkhand. Case-diary reveals that previously the father of the deceased took one Kia Seltos Car for the petitioner but the petitioner did not like it. He demanded MG Hector Car and it was arranged by taking loan of Rs. 15,00,000/- in the name of the elder daughter of the Respondent No. 6 for delivery to the petitioner.

49. The learned Sr. Advocate appearing on behalf of the petitioner tried her best to prove that the car was not purchased in the name of the petitioner. Therefore, the question as to demand and delivery of car to the petitioner



does not arise at all.

50. In reply, the learned Advocate appearing on behalf of Respondent No. 6 gives satisfactory explanation that the Respondent No. 6 took loan of Rs. 15,00,000/- from the bank in the name of his elder daughter, who carries on an independent business of interior decoration. The bank agreed to give her loan because of the fact that she has a running business, so the car was purchased in the name of the elder sister of the deceased. But from the conversation made between the father of the petitioner and the Respondent No. 6, it is clear that the petitioner and his family members demanded the said car as a consideration of marriage and it was delivered to him.

51. At this stage, the Court considers the statement made by the Respondent No. 6 in the F.I.R. with regard to demand of rest amount of Rs. 20,00,000/- in cash and the question as to whether the deceased was subjected to cruelty or harassment by her husband or any relative of her husband on demand of dowry. The F.I.R. is explicit about such allegation. Series of documents were filed on behalf of the informant to the Investigating Officer along with a pen-



drive to show the conversation between the parties and whatsapp chat etc. as a probe of harassment and mental cruelty upon the deceased by the petitioner and his family members. Thus, there are prima facie materials with regard to ingredients nos. B and C of Section 304 I.P.C.

52. With regard to the ingredient no. (A), it is already stated that the daughter of Respondent No. 6 died within one and half years of her marriage. Under such circumstances, the Court is duty bound to conduct a judicial scrutiny on the first ingredient of offence under Section 304B of the Indian Penal Code whether the death of the woman was caused by any burns, bodily injury or it must have occurred otherwise than under normal circumstances. Indisputably, death was not caused by any burn. There was also no bodily injury. This leads the Court to decide if the death of the wife of the petitioner occurred otherwise than normal circumstances.

53. Mr. Akhilesh Dutt Verma, learned Advocate appearing on behalf of Respondent No. 6 first refers to an unreported decision in the case of *Virendra Singh v. Chote Singh Sikarwar & Ors.*, passed by the Hon'ble Supreme



Court on 20th of September, 2024 in ***SLP (Criminal) Diary No 27022 of 2024***. The aforesaid Special Leave Petition was filed for quashment of FIR registered under Section 304B of the IPC. The Hon'ble Supreme Court found that all three ingredients of Section 304B of the IPC attracted under the facts and circumstances of the case. Therefore, it is held by the Hon'ble Supreme Court that the allegation of the prosecution and defence are required to be testified in trial to do complete justice with the parties.

54. I have already held that the death was not caused by any burn. There was also no bodily injury on the person of the deceased. On the other hand, medical documents suggest conclusively that death of the deceased was caused due to her sufferings and not otherwise than normal circumstances.

55. Mr. Verma further argues that the scope of Section 482 of the Cr.P.C. is very limited. The High Court cannot conduct a mini trial at the stage of discharge and/or quashing of the criminal proceedings.

56. In support of his contention, he refers to a decision of the Hon'ble Supreme Court in the case of



Central Bureau of Investigation v. Aryan Singh, reported in ***2023 SCC OnLine SC 379***. Paragraph no. 10 of the said judgment is relevant and quoted below: -

“10. From the impugned common judgment and order passed by the High Court, it appears that the High Court has dealt with the proceedings before it, as if, the High Court was conducting a mini trial and/or the High Court was considering the applications against the judgment and order passed by the learned Trial Court on conclusion of trial. As per the cardinal principle of law, at the stage of discharge and/or quashing of the criminal proceedings, while exercising the powers under Section 482 Cr.P.C., the Court is not required to conduct the mini trial. The High Court in the common impugned judgment and order has observed that the charges against the accused are not proved. This is not the stage where the prosecution/investigating agency is/are required to prove the charges. The charges are required to be proved during the trial on the basis of the



evidence led by the prosecution/investigating agency. Therefore, the High Court has materially erred in going in detail in the allegations and the material collected during the course of the investigation against the accused, at this stage. At the stage of discharge and/or while exercising the powers under Section 482 Cr.P.C., the Court has a very limited jurisdiction and is required to consider “whether any sufficient material is available to proceed further against the accused for which the accused is required to be tried or not.”

57. Referring to the observation of the Hon’ble Supreme Court in paragraph 10 hereinabove, it is submitted by Mr. Verma that in a writ petition, the High Court does not have any scope to come to a conclusion if the death of the deceased was caused under normal circumstances or otherwise than normal circumstances. This can only be decided during trial on the basis of evidence adduced by the parties.

58. The learned Advocate appearing on behalf of



Respondent No. 6 next refers to another case of the Hon'ble Supreme Court in *Abhishek v. State of Madhya Pradesh*, reported in **2023 5 BLJ (SC) 289** and submits that where an accused seeks quashing of FIR, invoking the inherent jurisdiction of the High Court, it is held impermissible for the High Court to enter into factual arena to adjudge the correctness of the allegation in the complaint. The power of quashing should be exercised sparingly with circumspection and in rarest of rare case. While examining the FIR/complaint, the quashing of which is sought, the Court cannot embark upon an inquiry as to the reliability or genuineness or otherwise of the allegations made therein. But if the Court thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law and more particularly the parameters laid down by the Hon'ble Supreme Court in *R.P. Kapur v. State of Punjab: AIR 1960 SC 866* and *State of Haryana and Ors. v. Bhajan Lal & Ors.: 1992 Suppl SCC 335*, the Court would have jurisdiction to quash the FIR / complaint.

59. Same view is expressed in a subsequent decision by the Hon'ble Supreme Court in *State of*



Karnataka v. M. Devendrappa & Anr., reported in ***2002 1 Supreme 192***.

60. Mr. Verma further submits that Mohan Singh's (supra) decision is not applicable under the facts and circumstances of this case because in Mohan Singh (supra), the second application for quashing the FIR was filed after two years of dismissal of the first application for quashing on the basis of certain subsequent events, but in the present case, the application for quashing the FIR registered on the basis of *Fard Beyan* by Respondent No. 6 was dismissed on 29th of July, 2024 in Cr. Misc. No. 50879 of 2024. Almost immediately thereafter, the instant writ petition has been filed on 17th of January, 2025 on the same set of facts and circumstances. Therefore, the subsequent writ petition is not maintainable.

61. The learned Advocate appearing on behalf of the Respondent No. 6 further submits that no reliance can be placed on the medical report annexed with the writ petition.

62. The Ascitic Fluid Test was not prescribed by any doctor on 15th of August, 2023. Secondly, ADA report is



not a part of police investigation. The absence of proper prescription for pathological investigation raises a critical doubt as to how and why were these tests conducted. Thirdly, as per the statement made by Dr. Astik, who initially treated the deceased, she was medically examined for the first time at about 12.30 p.m. on 15th of August, 2023. However, sample for Ascitic Fluid Test was taken at 10.00 a.m. This may *prima facie* suggest creation of false and fabricated report. Fourthly, the learned Advocate appearing on behalf of the Respondent No. 6 argues that Ascitic Fluid conclusion cannot be conducted at home or in a general pathology lab. There is no evidence collected by the Investigating Officer as to who collected Ascitic Fluid in pathological test and how.

63. The learned Advocate appearing on behalf of the Respondent No. 6 next submits that in the LAMA report, the Medical Officer mentioned rigidity and tenderness in abdominal region which is indicative of peritoneal trauma rather than a chronic infectious process like TB. Such rigidity and tenderness are consistent with perforation or acute abdominal trauma / injury.



64. It is also submitted by Mr. Verma that there is no explanation as to why case summary was issued on 22nd of August, 2023 by Universal Emergency Hospital and Trauma Centre Private Limited at Kumhrar, Patna. There is also no explanation as to why Universal Emergency Hospital and Trauma Centre Private Limited at Kumhrar, Patna issued the case summary of the deceased on 22nd of August, 2023, i.e., after seven days of her admission and five days after her death.

65. It is also pointed out by Mr. Verma that in the death summary, issued by Paras, HMRI on 17th of August, 2023, there was no finding that the petitioner was suffering from abdominal tuberculosis. Death of the deceased was caused due to multi organ failure. Moreover, the CT Scan report of the deceased showed multiple Air Foci, leading to perforation. Such perforation might be caused as a result of hard and blunt trauma in the abdominal region of the deceased. The medical report is not conclusive that the deceased expired as a result of abdominal tuberculosis.

66. In order to deal with the statement made by the learned Sr. Advocate for the petitioner as well as the learned



Advocate appearing for Respondent No. 6, it is necessary to examine the documents filed by both the parties in their writ petition as well as rejoinder.

67. In the writ petition, the petitioner has produced series of documents. The relevant points of which are discussed hereinbelow.

68. It is found from page nos. 48 and 49 of the writ petition that on 15th of August, 2023, the wife of the petitioner was first examined by Dr. S. K. Astik, Consultant Gastro and Physician, attached to Astik Gastroenterology and Endoscopy Centre and Doctor noted history of Amenorrhea with intermittent vomiting for the last two months with history of loose motion, vomiting for last two days and left sided periumbilical pain since 14th of August, 2023. He also noted tenderness and rigidity all over the abdomen with low blood pressure (86/60). The Doctor advised some medicine and ultra sonography and ADA test. The USG Scan of the deceased revealed:-

“Enlarged echogenic liver, single small subcentimetric hypoechoic hepatic lesion likely infective. Minimal left pleural effusion, moderate debris filled ascitis,



omental thickening, mildly dilated clumped bowel loops as described above features suggestive of infective pathology likely abdominal tuberculosis. Possibility of malignancy is to be ruled out.”

69. Adenosine Deaminase (ADA) of her Ascitic Fluid was found 113.4 U/L. Dr. Astik, on the basis of USG Scan Report and report of ADA diagnosed abdominal tuberculosis in the patient and started tablet 4FDC/Akurtl-42tab OD along with Tablet benadon and Inj. streptomycin along with other acute medication. All these medicines are used for treatment of tuberculosis.

70. I am not unmindful to note that there are contradictions with regard to timings of ultra sonography and ADA test and medical examination of the patient by Dr. Astik. However, it is ascertained from the prescription issued by Dr. Astik at 12.30 p.m. that he consulted USG report and ADA test report and prescribed medicines used for treatment of tuberculosis.

71. It is already stated that the patient was shifted to Paras, HMRI, Patna where she died on 17th of August, 2023 at 10.44 a.m. The death summary issued by Paras,



HMRI, Patna notes CECT whole abdomen suggestive of perforation with moderate fluid collection in peritoneal cavity and pneumoperitoneum and left side moderate pleural effusion.

72. Amenorrhea with intermittent vomiting for two months alongside the finding of USG Scan, the high ADA value, and acute bowel perforation suggest acute and fatal manifestations of a chronic disease process that had been in evaluation over the preceding two months at the very list.

73. On due consideration of the medical reports and the observation of this Court upon examination of the same, suggest that the wife of the petitioner died of abdominal tuberculosis. Therefore, the medical documents amply show that death of the deceased did not occur otherwise than under normal circumstances.

74. This is not the end of this case. This Court finds that police did not register any case on the basis of *fard beyan* of Respondent No. 6 for the offence punishable under 498 A of the Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act. Till date, no prayer has been



made by the Investigating Officer for adding the said penal provisions in Alam Ganj P. S. Case No. 747 of 2023.

75. From the medical advise issued by Dr. Astik (page 48 of the writ petition), it is clearly found that the deceased was suffering from Amenorrhea and intermittent vomiting for two months which are indicative of abdominal tuberculosis. No medical paper has been filed by the petitioner to show that he took proper care of the disease from which his wife was suffering during the said two months before being medically examined by Dr. Astik. Had she been medically treated at the outset of the onset of Amenorrhea and intermittent vomiting, her death could have been avoided. This prima facie shows negligence on the part of the petitioner and his family members, for which he may be held liable for committing offence under Section 304 A of the Indian Penal Code.

76. Again, it is for the Investigating Officer to investigate as to whether rash and negligent act is preceded with the knowledge that such act is likely to cause death. In such case, Section 304 part II of the Indian Penal Code will be applicable. If rash and negligence act is preceded by real



intention on the part of the wrong doer to cause death, Section 302 of the I.P.C. will be applicable.

77. The Hon'ble Apex Court observed in series of cases that the culpable homicide, not amounting to murder, can include rash or reckless driving on a public road with knowledge of the dangerous character and probable impact of the act resulting in death.

78. If the petitioner fails to produce any medical document to show that he took proper care and measures at least before two months of the death of his wife, when she complained of Amenorrhea with intermittent vomiting, it is suggestive of gross negligence on the part of the petitioner. If during investigation, it is found that the negligence by the petitioner was attributed with the knowledge of the consequence, he may be fastened with culpability of homicide not amounting to murder punishable under Section 304 part II.

79. In view of my above finding, I have no other alternative but to hold that in the instant case, the F.I.R. being Alam Ganj P. S. Case No. 747 of 2023, dated 18th August, 2023, cannot be quashed.



80. Now, let me consider as to whether this Court can pass any order / direction / writ, recalling non-bailable warrant of arrest, issued by the learned A.C.J.M.-VI, Patna, in connection with Alam Ganj P. S. Case No. 747 of 2023.

81. I have already held that the anticipatory bail of the petitioner was rejected up to the Hon'ble Supreme Court.

82. Referring to a decision in *M.C. Abraham and Anr. v. State of Maharashtra*, reported in (2002) (Supp.) 5 SCR 677, it is submitted by the learned Sr. Advocate appearing on behalf of the petitioner that no such mandatory order or direction should be issued against the petitioner to surrender before the Trial Court while rejecting the application for bail.

83. It is already recorded by this Court while rejecting application for anticipatory bail, directed the petitioner to surrender before the jurisdictional Magistrate within eight weeks from the date of the order. The said order was judicially decided by the Hon'ble Supreme Court in SLP (Cri) No. 9887 of 2023. The Hon'ble Supreme Court



dismissed the SLP without interfering against the direction passed by the Coordinate Bench in Cr. Misc. No. 79855 of 2023 under Section 438 of the Cr.P.C. The petitioner tries to take shelter on the basis of an order, dated 10th of September, 2024, where he was directed that during the period the order of suspension shall remain in force, the petitioner shall not leave the station without obtaining prior permission.

84. It is needless to say that the judicial order prevails over the administrative order. When by virtue of a judicial order the petitioner was directed to surrender before the jurisdictional Magistrate and the said order remains valid up to the Hon'ble Supreme Court, he must surrender and subsequent to his surrender, he may take appropriate action in accordance with law. The direction of the Hon'ble Supreme Court cannot be flouted under the garb of an administrative order passed by this Court on 10th of September, 2024.

85. For the reasons stated above, the instant writ petition is dismissed on contest, however, without costs, with following order: -



(i) In view of very technical nature of the case involving application of penal provision on the basis of proper appreciation of medical documents and the failure on the part of the State Police, even to include Section 498A and Sections 3 and 4 of the Dowry Prohibition Act, coupled with the fact that as a Judicial Magistrate, the petitioner has every scope to influence investigation conducted by the State Police, in connection with Alam Ganj P. S. Case No. 747 of 2023, this Court is of the opinion that investigation of this case should be entrusted to the Central Bureau of Investigation.

(ii) Order accordingly.

(iii) The Investigating Officer is directed to hand over the case-diary, seized materials and documents to the concerned authority of the CBI by 19th of April, 2025.

(iv) The petitioner is directed to immediately surrender before the learned A.C.J.M.-VI, Patna within three days from the date of this order, failing which non-bailable warrant issued against the petitioner shall be executed.

(v) The CBI is permitted to add Section 304A and



alternatively 304 part II with 498A of the Indian Penal Code
and Sections 3 / 4 of the Dowry Prohibition Act against the
petitioner and other accused persons in connection with
Alam Ganj P. S. Case No. 747 of 2023.

(Bibek Chaudhuri, J)

skm/-

AFR/NAFR	AFR
CAV DATE	07.04.2025
Uploading Date	18.04.2025
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