IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.48359 of 2019

Arising Out of PS. Case No.-31 Year-2019 Thana- MIRGANJ District- Gopalganj

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Tarkeshwar Pandit S/o Bhirigun Pandit Resident of Laddagar Lakshmi Ram, P.S.- Hathua, District- Gopalganj

... ... Petitioner

Versus

The State Of Bihar

... ... Opposite Party

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Appearance :

For the Petitioner	:	Mr. Md. Anisur Rahman Dr. Anand Kumar, Adv. Mr. Kamya Thakur, Adv.
For the private resp.	:	Mr. Navin Kumar Pandey, Adv.
For the State	:	Mr. Shailendra Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 11-08-2026

Heard the parties.

2. This application has been filed for quashing the order dated 09.04.2019 as passed in A.B.P. No. 363/2019 by learned Sessions Judge, Gopalganj arising out of Mirganj P.S. Case No. 31/2019 G.R. No. 407/19 u/s 498A and ¾ of Dowry Prohibition Act, which modified vide order dated 14.03.2019, directing petitioner to pay a sum of Rs. 10,000/- per month to the informant without giving any opportunity to the petitioner.

3. The prosecution case is that informant Lucki Devi wife of Tarkeshwar Padit, Resident of Sabrezi Paschim Tola, P.S. Mirganj, District Gopalganj gave a written report

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dated 08.02.2019 to the S.H.O. of Mirganj (Gopalganj) P.S. alleging therein that she was married with Tarkeshwar Padit, son of Bhirigun Padit of Village Maddagon Lakshmi Ram P.S. Hathua, District Gopalganj as per the Hindu rites and rituals and on the occasion of marriage, her father gave cloth, utensils, ornaments, and furniture etc as per his capacity. Her "Gauna" was held on 7.12.2012. She further alleged that after 10 days of her marriage her husband went to Delhi as he was doing Job there. He used to come home and again returned to Delhi after staying for 10-15 days. It is also alleged that when they started talking with the informant his mother used to object saying the informants barren. The petitioner and his parents used to assault, torture the informant and also used to abuse her parents with filthy language and due to which she became ill. After some days his sister Sangita Devi and her husband Ram Daroga Pandit came and all the persons sitting in the courtyard stated that nothing will be done by keeping the informant in the house and stated to cause harassment so that she may go to her parent's house. The accused persons

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did not care the informant in her illness then her father took her to his house on 8.5.2018 and thereafter information in this regard was given to the S.H.O of Mirganj as well as Sub- Divisional Officer Hathua. She has got information that her husband has solemnised another marriage.

4. On the basis of aforesaid written report, the present case i.e. Mirganj P.S. Case No. 31 of 2019 was registered on 09.02.2019 (G.R. No. 407 of 2019) for the offences punishable under Section 498(A) of Indian penal code and Section ¾ of Dowry Prohibition Act.

5. After investigation, charge-sheet was submitted, whereafter, the learned Magistrate took cognizance for the aforesaid offences.

6. Learned counsel appearing on behalf of petitioner submitted that in aforesaid case, the petitioner preferred anticipatory bail petition through A.B.P No. 363 of 2019 dated 14.03.2019 before the Sessions Judge, Gopalganj, wherein, while granting bail vide order dated 14.03.2019, several onerous conditions were imposed, where the petitioner is mainly aggrieved by condition no. 5

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which is available through the impugned order dated 14.03.2019 as under:

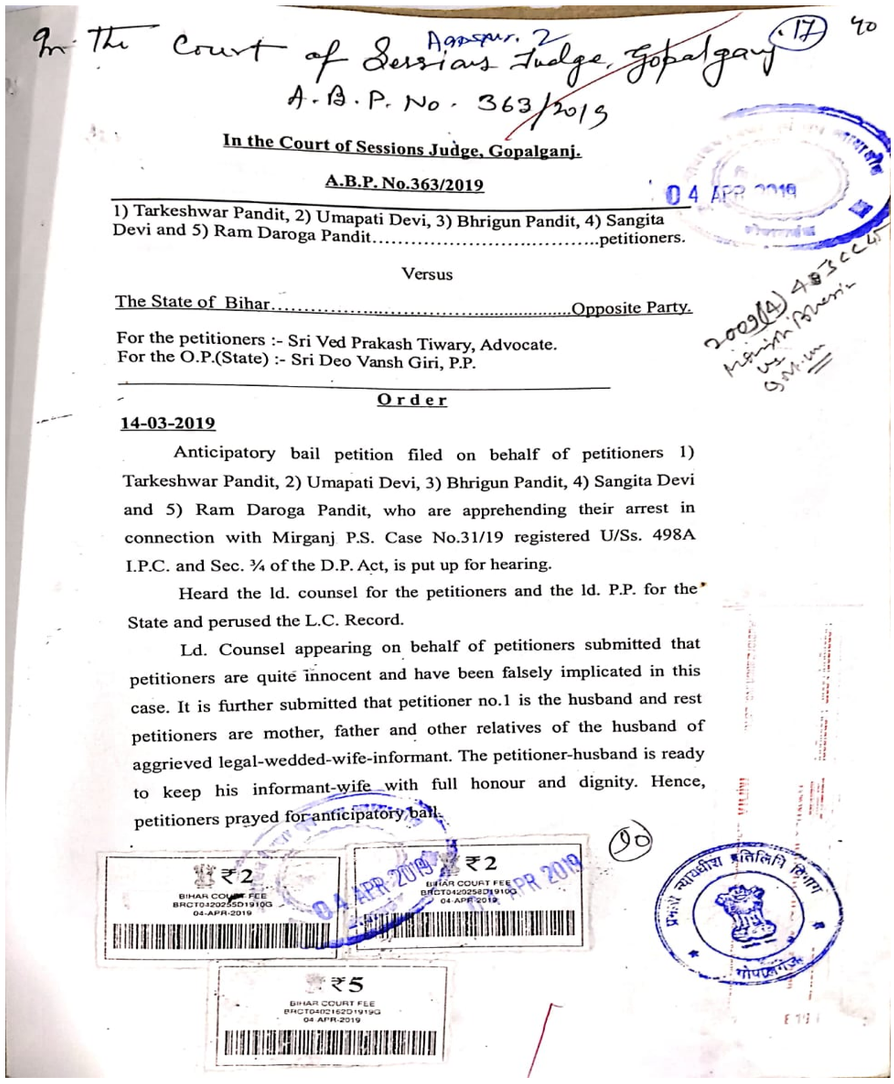
> *"The acceptance of bail bond of petitioners will be conditions precedent after making payment of Rs.10,000/-(ten thousand) to the aggrieved-legal-wedded-wife in her hand for showing the honest desire together with on filing affidavit to the effect that the husband-petitioner of the legal-wedded-wife-informant will keep accompany with him and give separate and good accommodation and also provide her essential commodities and will maintain conjugal relation."*

7. It is submitted that the aforesaid condition categorically suggest that the payment was for one time just to show the honest desire that the petitioner/husband is willing to keep the informant/wife with all her love and dignity. It is submitted that subsequent to the aforesaid order dated 14.03.2019 as passed in ABP No. 363 of 2019, the informant/wife filed a petition dated 28.03.2019 in the aforesaid ABP No. 363 of 2019 before the learned Sessions Judge, Gopalganj without any supporting affidavit that the amount of Rs. 10,000/- was not one time rather it was for each month and in view of aforesaid, petition dated 28.03.2019, a separate order was passed on 09.04.2019 in continuity of ABP No. 363 of 2019

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clarifying thereof that the Rs. 10,000 was not one time token money rather petitioner was directed to pay per month to informant/wife.

8. To understand both order, it would be apposite to reproduce the impugned order dated 14.03.2019 and impugned order dated 09.04.2019 as passed in ABP No. 363 of 2019 which reads as under :



In the Court of Addnl. Sessions Judge, Gopalganj. (17) 40

A.B.P. No. 363/2019

In the Court of Sessions Judge, Gopalganj.

A.B.P. No.363/2019

04 APR 2019

1) Tarkeshwar Pandit, 2) Umapati Devi, 3) Bhrigun Pandit, 4) Sangita Devi and 5) Ram Daroga Pandit.....petitioners.

Versus

The State of Bihar.....Opposite Party.

2009(4) 4836 Manju Devi Vs State of Bihar

For the petitioners :- Sri Ved Prakash Tiwary, Advocate.
For the O.P.(State) :- Sri Deo Vansh Giri, P.P.

Order

14-03-2019

Anticipatory bail petition filed on behalf of petitioners 1) Tarkeshwar Pandit, 2) Umapati Devi, 3) Bhrigun Pandit, 4) Sangita Devi and 5) Ram Daroga Pandit, who are apprehending their arrest in connection with Mirganj P.S. Case No.31/19 registered U/Ss. 498A I.P.C. and Sec. ¾ of the D.P. Act, is put up for hearing.

Heard the ld. counsel for the petitioners and the ld. P.P. for the State and perused the L.C. Record.

Ld. Counsel appearing on behalf of petitioners submitted that petitioners are quite innocent and have been falsely implicated in this case. It is further submitted that petitioner no.1 is the husband and rest petitioners are mother, father and other relatives of the husband of aggrieved legal-wedded-wife-informant. The petitioner-husband is ready to keep his informant-wife with full honour and dignity. Hence, petitioners prayed for anticipatory bail.

(10)

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₹2 BIHAR COURT FEE BRCT0420252D1910G 04 APR 2019

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(2/4)

A.B.P. No.363/2019

04 APR 2019

(Contd./14-03-2019)

Ld. P.P. for the State fairly submitted that if both the spouses are ready to live together, petitioners may be enlarged on anticipatory bail imposing conditions.

Ld. P.P. for the State fairly submitted that if both the spouses are ready to live together, petitioners may be enlarged on anticipatory bail imposing conditions.

The prosecution case in brief is that the marriage of informant Lakki Devi was solemnized with petitioner no.1 in accordance with Hindu Rites and Customs and her Gawana was performed on 7-12-2012. It is alleged that the accused persons used to torture her mentally and physically and also called her 'Bajhin'(barren lady) and due to her torture and cruelty, she became ill seriously and thereafter, on information, her father came and took away her from her matrimonial home on 8-5-2018. Hence, the F.I.R.

Perused the L.C. Record. It appears that admittedly, it is a case of matrimonial dispute and petitioner no.1 is the husband and rest petitioners are mother, father and other relatives of the husband of aggrieved legal-wedded-wife-informant. Today, husband-petitioner is not physically present before the court, but his father is present and has submitted that husband is ready to keep his wife and he will also insist him to keep his wife-informant with full honour and dignity. On the the other hand wife-informant along with her father and mother are physically present before the court and all of them narrated the pathetic

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A.B.P. No.363/2019

(Contd./14-03-2019)

story wife-informant and stated that husband-petitioner has solemnized second marriage with one Puja Kumari.

This anticipatory bail petition of the petitioners is being allowed on account of condition that husband-petitioner has no option to quit his informant-wife in any situation and provide her good accommodation to save her from destitution and starvation condition to avoid vagrancy.

Having considered the aforesaid facts and circumstances of the case and submission of the ld. counsel for the parties, the prayer for anticipatory bail of petitioners is allowed imposing conditions. It is, accordingly, ordered that in the event of arrest or surrender within four weeks from today, the above named petitioners shall be enlarged on bail on furnishing bail bond of Rs.10,000/- with two sureties of the like amount each to the satisfaction of the ld. court-below subject to conditions as laid down U/S 438(2) Cr.P.C.

Further conditions are as follows:

i) Petitioner-husband will file affidavit sworn by him to the effect that he will accompany with him his legal wedded wife towards providing separate good accommodation to his aggrieved legal wedded wife for ensuing destitution and starvation condition to avoid vagrancy.

ii) In-laws accused will never create any hindrance in making good harmony between both the spouses in any way.

iii) If the wife-informant is not desirous to live in her in-laws' house accompany with her husband and his relatives on being showing the real truth by showing cogent and reasonable ground which will be

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04 APR 2019

A.B.P. No.363/2019

(Contd./14-03-2019)

scrutinized properly by the ld. Court, who is in seisin of the record on being verified applying prudence as well as on being fully satisfied with the cogent and reasonable ground assigned on the part of legal-wedded-wife-informant then, she will be entitled to get Rs.10,000/-(ten thousand) for her to save her from destitution and starvation condition to avoid vagrancy.

iv) If the petitioners-accused failed to abide and follow any condition over which the anticipatory bail has been granted, the petitioners-accused will not avail the privilege of anticipatory bail and they will be kept behind the bar after cancellation of bail-bonds of the petitioners-accused on being followed the provision U/S 437(V) Cr.P.C.

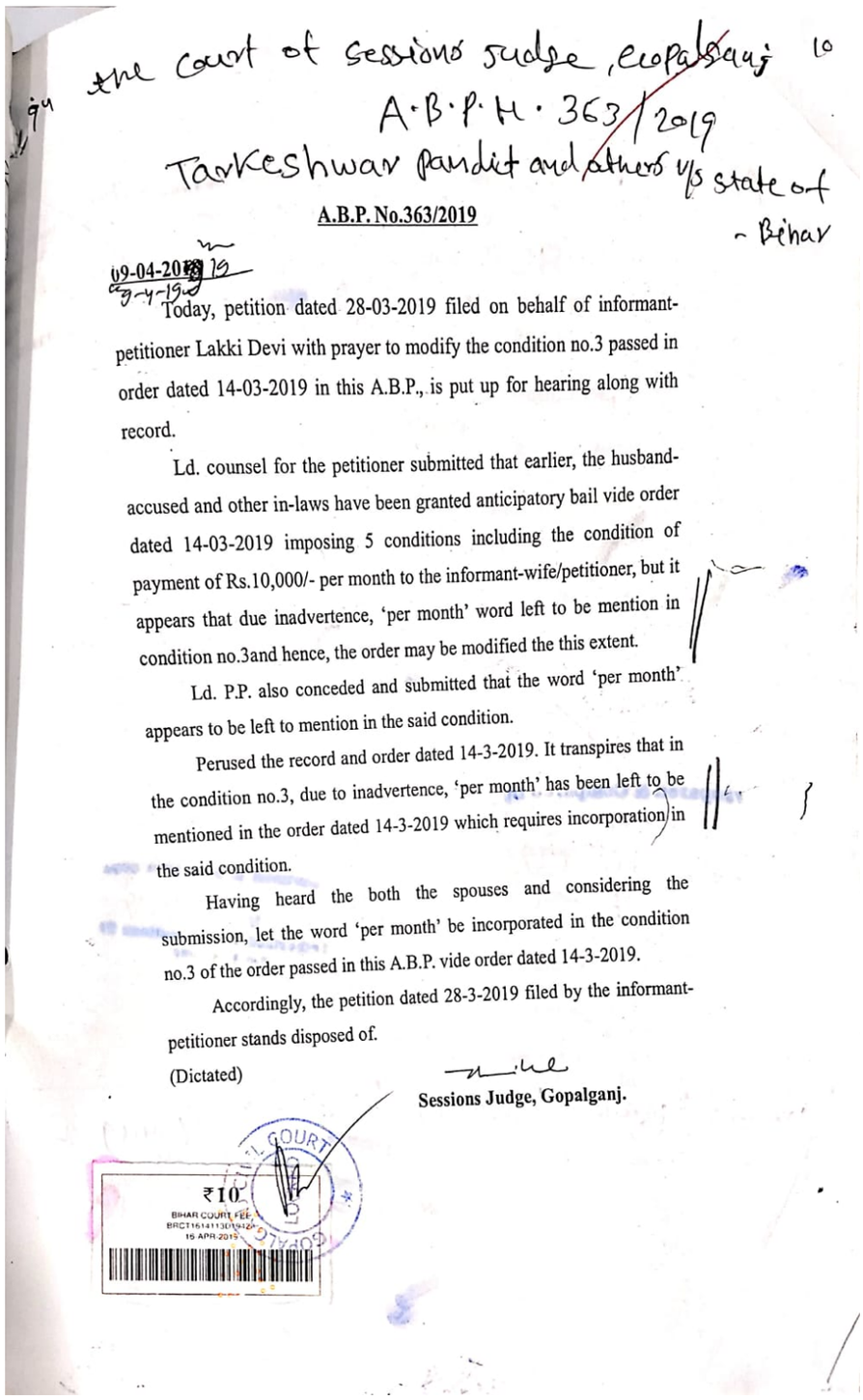
*v) The acceptance of bail bond of petitioners will be conditions precedent after making payment of Rs.10,000/-(ten thousand) to the aggrieved-legal-wedded-wife **in her hand** for showing the honest desire together with on filing affidavit to the effect that the husband-petitioner of the legal-wedded-wife-informant will keep accompany with him and give separate and good-accommodation and also provide her essential commodities and will maintain conjugal relation.*

(Dictated)

Sessions Judge, Gopalganj.

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Impugned order dated 09.04.2019 as passed in ABP No. 363 of 2019



In the court of Sessions Judge, Gopalganj
A.B.P.H. 363/2019
Tarkeshwar Pandit and others v/s State of - Bihar

A.B.P. No.363/2019

09-04-2019
9-4-19

Today, petition dated 28-03-2019 filed on behalf of informant-petitioner Lakki Devi with prayer to modify the condition no.3 passed in order dated 14-03-2019 in this A.B.P., is put up for hearing along with record.

Ld. counsel for the petitioner submitted that earlier, the husband-accused and other in-laws have been granted anticipatory bail vide order dated 14-03-2019 imposing 5 conditions including the condition of payment of Rs.10,000/- per month to the informant-wife/petitioner, but it appears that due inadvertence, 'per month' word left to be mention in condition no.3and hence, the order may be modified the this extent.

Ld. P.P. also conceded and submitted that the word 'per month' appears to be left to mention in the said condition.

Perused the record and order dated 14-3-2019. It transpires that in the condition no.3, due to inadvertence, 'per month' has been left to be mentioned in the order dated 14-3-2019 which requires incorporation in the said condition.

Having heard the both the spouses and considering the submission, let the word 'per month' be incorporated in the condition no.3 of the order passed in this A.B.P. vide order dated 14-3-2019.

Accordingly, the petition dated 28-3-2019 filed by the informant-petitioner stands disposed of.

(Dictated)

Sessions Judge, Gopalganj.

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9. It is submitted that both the order as mentioned aforesaid are bad in the eyes of law for the reasons that the onerous condition cannot be imposed while deciding bail petition and furthermore, no order regarding maintenance amount can be fixed while granting bail assuming the function of family court. It is further pointed out that the learned Sessions Judge, Gopalganj reviewed his own order merely on the basis of petition filed by informant/wife and same is also not permittable under the law.

10. Learned counsel for the petitioner relied upon the legal report of Hon'ble Supreme Court as available through **Munish Bhasin and Ors. v. State(Government of NCT of Delhi and Anr.)** reported in **(2009) 4 SCC 45** and also **Srikant Kumar @ Shrikant Kumar v. State of Bihar and Anr. [2025 SCC OnLine SC 2215]**. It would be apposite to reproduce the paragraph no. 14 of **Munish Bhasin Case (supra)** which reads as under:

> *"14. The case of the appellant is that his wife Renuka is employed and receiving a handsome salary and therefore is not entitled to maintenance. Normally, the question of grant of maintenance should be left to be decided by the competent court in an appropriate proceedings where the parties can adduce evidence in support of their respective case, after which liability of husband to pay maintenance could*

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> *be determined and appropriate order would be passed directing the husband to pay amount of maintenance to his wife. The record of the instant case indicates that the wife of the appellant has already approached the appropriate court for grant of maintenance and therefore the High Court should have refrained from granting maintenance to the wife and child of the appellant while exercising powers under Section 438 of the Code. The condition imposed by the High Court directing the appellant to pay a sum of Rs 12,500 per month as maintenance to his wife and child is onerous, unwarranted and is liable to be set aside."*

11. It would also be apposite to reproduce the paragraph no. 9 of **Srikant Kumar @ Shrikant Kumar Case (supra)** which reads as under:

> *"9. When application for bail is filed, the Court is required to impose such bail conditions which would ensure that the appellant does not flee from justice and is available to face Trial. Imposing conditions which are irrelevant for exercise of power under Section 438 of the CrPC would not therefore be warranted."*

12. Learned counsel appearing on behalf of informant/wife while opposing the aforesaid petition submitted that the petitioner filed a petition before the learned trial court on 06.05.2026 that he is ready to pay Rs. 10,000/- on monthly basis to the informant/wife, but fairly conceded that no such request was made by the petitioner while deciding the original bail petition in ABP No. 363 of 2019 dated 14.03.2019.

13. Contrary to the aforesaid submission, it is pointed out by learned counsel for the petitioner that the

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present quashing petition was filed in the year 2019, whereas the petition as mentioned aforesaid was filed in 2026. It is submitted that petitioner has already filed restitution petition before the learned family court, Gopalganj under Section 9 of Hindu Marriage Act, and if informant/wife is desirous to continue her life with petitioner, he has no objection, if she furnish any affidavit in the said proceedings as to live her matrimonial life with this petitioner.

14. Let it be so as the condition imposed by learned trial court in ABP No. 363 of 2019 dated 14.03.2019 appears onerous, similarly reviewing its own order is further illegal which has been committed by learned trial court vide order dated 09.04.2019, accordingly, the impugned order dated 14.03.2019 and 09.04.2019 respectively passed in ABP No. 363 of 2019 as passed by Sessions Judge, Gopalganj is hereby quashed/set aside qua petitioner.

15. It is made clear that informant/wife is not prevented to file any independent proceeding for

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maintenance before learned family court and, if any, such petition filed before the learned family court, Gopalganj, Bihar, same can be decided at its earliest in accordance with law.

16. Accordingly, the present petition stands allowed.

17. Let the judgment be sent to sent to learned trial court forthwith with TCR, if any.

(Chandra Shekhar Jha, J.)

Aniket/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	12.08.2026
Transmission Date	12.08.2026

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