

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.18522 of 2015

Arising Out of PS.Case No. -211 Year- 2013 Thana -RAJIVNAGAR District- PATNA

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Rajeev Kumar S/o Lalan Kishor Choubey @ Lalan Choubey Resident of
Village- Rasulpur Majholia Road P.S.- Quazi Mohammadpur Dist.
Muzaffarpur

.... Petitioner/s

Versus

1.The State of Bihar.

2. Shilpi Dwivedi W/o Rajeev Kumar, D/o- Mahenda Pd. Dwivedi,
Resident of Mohalla Rajeev Nagar, Road No. 14A, P.S. Rajeev Nagar,
Dist. Patna.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Chandra Mohan Jha, Adv.

For the State : Mr. Arun Kumar, APP

For the O.P. No.2 : Mr. Nishant Kumar Jha, Adv.

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL ORDER

5 22-07-2015

Heard learned counsel for the parties.

2. When this case for grant of anticipatory bail was heard for the first time, this Court had passed an order on 15.06.2015 provisional bail to the petitioner for a period of four weeks. The relevant part of the order of this Court dated 15.06.2015 reads as follows:-

"Having regard to the situation in which the marriage between the petitioner and Opposite Party No. 2 has almost failed, inasmuch as, there is not only the present complaint case alleging offence under Section-498A of IPC in which the petitioner seeks anticipatory bail but there is also a divorce case filed by Opposite Party No. 2 against the husband,



this Court for the time being keeping in view the offer given by the learned counsel for the petitioner that the petitioner would be ready for one time settlement of the dispute, is inclined to grant the privilege of anticipatory bail to the petitioner only for a period of four weeks."

3. Thereafter when both the petitioner and opposite party no. 2 along with their counsel had appeared on 9.7.2015 and again on 10.07.2015 in Chambers, an order was passed on 10.07.2015 which reads as follows:-

"This Court has made its best of the endeavors both yesterday and today to find out possibility any conciliation for saving of the married life of the petitioner with opposite party no.2 but then whatever has been transpired in course of discussion, not only with the learned counsel for the petitioner and opposite party no.2 but also with the petitioner and opposite party no.2, in person, as well as their father and mother respectively, would now satisfy this Court that there is absolutely no possibility of any settlement for further continuance of their married life.

Under such circumstances, the petitioner and the opposite party no.2 have agreed to dissolve their marriage by giving a descent burial to this criminal case as well as the divorce petition on the following terms and conditions:-



(i) The petitioner shall, at the time of surrender within a period of four weeks from today, shall render proof of deposit of a sum of Rs. Rs. 10,00,000/- (Ten Lac Only) to the opposite party no.2 in the A/c No. 625901524229 ICICI Bank, Patna Branch, IFS Code ICIC 0006259 and, if he does so, the court below may grant provisional bail of the petitioner for a period of ten weeks.

(ii) On completion of a period of ten weeks, the petitioner shall again surrender in the court below and shall again produce evidence of deposit of Rs. 5,00,000/- (Five Lac Only) in the aforesaid bank account of opposite party no.2 and, if he does so, his provisional bail may again be extended by a period of another ten weeks.

(iii) On the expiry of aforesaid period of ten weeks, the petitioner shall again surrender and produce evidence of deposit of Rs. 5,00,000/- (Five Lac Only) in the same bank account of the opposite party no.2 by way of full and final amount to the tune of Rs. 20,00,000/- (Twenty Lac Only), whereafter, the bail of the petitioner may be confirmed.

(iv) After the provisional bail of the petitioner would be confirmed, the opposite party no.2 shall file an application for



withdrawal of the criminal case against the petitioner and other accused persons and the court below, after examining the opposite party no.2 may drop the present criminal case against the petitioner and other accused persons.

(v) Thereafter, both the petitioner and the opposite party no.2 shall approach the concerned Family Court in the pending divorce petition filed by the opposite party no.2 being Matrimonial Case No. 5859 of 2014 for mutual divorce in terms of Section 13(b) of the Hindu Marriage Act the opposite party no.2, the applicant of the divorce case and the petitioner, the husband of the opposite party in the matrimonial on which a decree of mutual divorce may be as early as possible and preferably within a period of one month from the date of filing of the application for such mutual divorce.

Since the aforesaid terms and conditions arrived between the parties have been conveyed orally, this Court would direct the learned counsel for both the parties to put it in the form of an affidavit duly sworn by both the petitioner and the opposite party no.2."

4. Pursuant to the aforesaid order of this Court dated 10.7.2015, a joint affidavit has been filed both on behalf of the

petitioner and the opposite party no.2, which reads as follows:-

“Joint Affidavit on behalf of the Petitioner & O.P. No.2 named
above

I, Rajeev Kumar, aged about 33 years, S/o Lalan Kishor Choubey @ Lalan Choubey, Resident of Village- Rasulpur Majholia Road, P.S.- Kaji Mohammadpur, District – Muzaffarpur.

AND

I, Shilpi Dwivedi, aged about 31 years, W/o Rajeev Kumar, D/o Late Mahendra Prasad Dwivedi, Resident of Mohalla- Rajeev Nagar, Road No. 14A, P.S. Rajeev Nagar, District Patna do hereby solemnly affirm and state as follows:-

1. That we are petitioner and the Opposite Party No.2 in the instant case and as such are acquainted with the facts and circumstances of the case.
2. That the petitioner has been made accused in Rajeev Nagar P.S. Case No. 211/2013 dated 31.12.2013 for offences punishable under sections 498A and 323 of the Indian Penal Code which is pending before the learned Judicial Magistrate, 1st Class, Patna.
3. That the petitioner preferred an application for grant of anticipatory bail before the Hon'ble High Court, Patna. The Hon'ble Court after hearing the parties granted the petitioner the privilege of anticipatory bail for four weeks vide order dated 15.06.2015. The Hon'ble Court further directed the petitioner as well as the O.P. No.2 to appear in person in chamber on 08.07.2015.
4. That in pursuance of the order dated 15.06.2015 the petitioner and the O.P. No.2 appeared in person in chamber on 08.07.2015 and agreed to settle the dispute between them amicably.
5. That the petitioner shall deposit an amount of Rs. 20 lacs (Twenty Lacs Only) in the Bank Account of the O.P. No.2 in A/C No. 625901524229, Bank Name- ICICI, Patna

Branch, IFS Code- ICIC0006259 within 6 months in three installments.

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6. *That the petitioner shall deposit an amount of Rs. 10 lacs (Ten Lacs Only) in the Bank Account of O.P. No.2 as cited above within four weeks from date of the order of this Hon'ble Court and the bail bond of the petitioner will be extended for next ten weeks and the petitioner shall deposit an amount of Rs. 5 lacs (Five Lacs Only) in the Bank Account of O.P. No.2 as cited above within the period of this ten weeks and accordingly the bail bond of the petitioner will be extended to next ten weeks and the petitioner shall again deposit an amount of Rs. 5 lacs (Five Lacs Only) in the Bank Account of O.P. No.2 as cited above within the period of this ten weeks.*
 7. *That having received the aforesaid amount of Rs. 20 lacs (Twenty Lacs Only) the O.P. No.2 shall immediately withdraw the present criminal case including other criminal case if any filed against the petitioner and his family members anywhere. This is also made clear that the O.P. No.2 shall not file any matrimonial case or case for maintenance against the petitioner and his family members.*
 8. *That the petitioner as well as the O.P. No.2 will file a joint petition under section 13(B) of the Hindu Marriage Act in the Divorce Case bearing 5859 of 2014 which has been filed by the O.P. No.2 and which is pending before the Family Court, Patna and after getting the decree of divorce both the parties will be at liberty to lead their lives separately."*

5. In view of the above agreement between the parties, this Court would now direct as follows:-

- (i) The petitioner shall surrender before the court

below within a period of four weeks from today and for this purpose his provisional bail granted earlier to the petitioner is also extended for a further period of 15.07.2015 to 19.08.2015.

(ii) In the period of four weeks from today, the petitioner shall not only comply the terms and conditions of the agreement by making payment of Rs. 10,000,00/- (Ten Lac Only) in the bank account of the opposite party no.2 but would also produce the evidence of deposit of Rs. 10,000,00/- (Ten Lac Only) in the bank account of the petitioner and the court below, upon being satisfied from the query made from the opposite party no.2 or her counsel as with regard to deposit of the aforesaid amount of Rs. 10,00,000/- (Ten Lacs Only) in her account, shall extend provisional bail to the petitioner for a period of ten weeks.

(ii) The petitioner, upon completion of a period of aforesaid ten weeks, shall again appear before the court below and shall produce an evidence of deposit of Rs. 5,00,000/- (Five Lacs Only) in the account of the opposite party no.2 which again will be verified by the court below from the opposite party no.2 or her counsel and the court below, upon being satisfied, will grant further provisional bail to the petitioner for a period of ten weeks.

(iii) Upon completion of the aforesaid period of ten weeks, even this time the petitioner shall appear before this Court



below and shall again produce the evidence showing payment of third and final installment of Rs. 5,00,000/- (Five Lacs Only) in the bank account of the opposite party no.2 and if the same is also acknowledged by the opposite party no.2 or her counsel, the provisional bail of the petitioner shall be confirmed.

(iv) Thereafter, while the opposite party no.2, within one month of the confirmation of the provisional bail of the petitioner, shall file an application for withdrawal of the criminal case against the petitioner and other accused persons, the petitioner and the opposite party no. 2, within the same period, shall also file an application for mutual divorce in the pending matrimonial case.

(v) The court below shall, after ascertaining from petitioner and the opposite party no.2 and being satisfied of filing the petition mutual divorce before the Family Court shall drop the further proceedings of criminal case.

(vi) Within a period of one month from date of dropping of the criminal case both the petitioner and the opposite party no.2 shall approach the family court where the Matrimonial Case No. 5859 of 2014 filed for divorce by the petitioner is pending and upon production of order sheet of dropping of criminal case, the Family Court also after examining both the

petitioner and opposite party no. 2 shall allow mutual divorce as early as possible preferably within a period of one month.

(vii) Both the petitioner and opposite party no. 2 shall also abide by the other terms and conditions in the agreement in their joint affidavit as quoted above which now is made Rule of this Court.

6. With the aforesaid observations and directions this application is finally disposed of.

(Mihir Kumar Jha, J)

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