

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.25088 of 2015

Arising Out of PS.Case No. -73 Year- 2014 Thana -DULHIN BAZAR District- PATNA

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Aftab Quraishi S/o Shamim Quraishi Resident of Kopa, Police Station
Dulhin Bazar, District Patna.

.... Petitioner/s

Versus

1.The State of Bihar.
2. Naziya Khatoon wife of Aftab Quraishi daughter of Anwar Qurashi @
Katta Qurashi, presently residing at Kasai Tola(Milki Muhalla)Ara, P.S.
Town (Ara), District Bhojpur at Ara.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Gopal Swaroop Dubey, Adv
For the Opposite Party/s : Mr. S.M. Rahman (APP)

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL ORDER

4 23-09-2015 Heard learned counsel for the parties.

2. While this Court would not be satisfied with either of the two service reports, inasmuch as, the Officer-in-Charge of Dulhin Bazar Police Station had got the notices served on the father of the Opposite Party No. 2 and process server had served the notices on the brother of the Opposite Party No. 2, this Court, in order to ensure effective service of notice on Opposite Party No. 2, shall now direct the learned counsel for the petitioner to take steps for substituted service of notice by getting such



notice for her appearance in this case published in the two daily newspapers having wide circulation, one in English and the other in Hindi, in the area where the Opposite Party No. 2 is presently residing.

3. When such an order has been passed learned counsel for the petitioner submits the petitioner on account of poverty and infact being very poor is not in a position to meet the expenditure of substituted service of notice on Opposite party No. 2, by getting such notice published in newspaper. He has therefore sought leave to proceed to make his submissions on the merit of the case in absence of opposite party no. 2.

4. Learned counsel for the petitioner in this regard has submitted that the allegation against the petitioner for offence under Section 307 and 498A of Indian Penal Code as well as Section 3 and 4 of Dowry Prohibition Act to be absolutely false and concocted, inasmuch as, it cannot be believed that if six persons including the petitioner had sought to strangle Opposite Party No. 2, she could have



escaped totally unhurt inasmuch as there is no injury report to substantiated the allegation of offence under Section 307 I.P.C. He has also submitted that the main reason for filing of this Police case against the petitioner is that the Opposite Party No. 2, has an urban background and she does not want to live with the petitioner, who is a daily wage earner and belongs to rural area.

5. He has also reiterated the earlier stand that the petitioner was/is always ready to keep the Wife-Opposite Party No. 2 as his wife with due respect and dignity but it is she, who has deliberately been refusing to live with the petitioner.

6. In view of the fact, that the petitioner still wants to keep his wife Opposite Party No. 2 and his child with him with due respect and dignity and that the Wife-Opposite Party No. 2, had not appeared before the Court below or even before this Court for ascertaining her views, it would direct the petitioner namely, **Aftab Quraishi**, to surrender before the Court below within a



period of four weeks from today, and if he does so, he would be released on provisional bail for a period of one month, on furnishing bail bond of Rs. 10,000/- (ten thousand) with two sureties of the like amount each to the satisfaction of **Judicial Magistrate, 1st Class, Danapur, Patna** in connection with **Dulhin Bazar P.S. Case No. 73/14**, subject to the conditions laid down under Section-438 (2) Cr. P.C and also subject to the following conditions:-

(i) In this period of one month, the Court below shall ensure personal appearance of Opposite Party No.2 before it even by utilizing the services of the Officer-in-Charge of Dulhin Bazar Police Station and if after hearing the Opposite Party No. 2 and/or her counsel it is found that she on her own will and accord does not want to live with the petitioner, such provisional bail of the petitioner shall be confirmed but on the other hand if it is found that the Opposite Party No. 2, wants to live with the petitioner, the petitioner shall be directed to take the Wife-Opposite Party No. 2 with him for living together and in such event the provisional bail of the petitioner shall be extended again for a

period of three months.

(ii) After expiry of period of three months the petitioner and Wife-Opposite Party No. 2, shall again appear before the Court below and the trial Court will make similar inquiry from Wife-Opposite Party No. 2, and on finding that she and her child was not subjected to any further cruelty, mental or physical by her husband or his family members, the provisional bail of the petitioner shall be extended, once again for a period of six months.

(iii) After expiry of period of six months, the petitioner and Wife-Opposite Party No. 2 shall again appear before the Court below and the Court below will once again make inquiry from Wife-Opposite Party No. 2, as to whether she and her child in the intervening period of six months was subjected to any cruelty, mental or physical by her husband or his family members and in the event of there being no complain as with regard to behaviour of the petitioner and his family members, the provisional bail of the petitioner shall be confirmed.

(iv) It is also made clear that if the Wife-Opposite Party No. 2, at any point of time during the pendency of the present criminal case alleges that she was subjected to any cruelty, mental or physical by her husband or his family members, the

bail of the petitioner shall be cancelled forthwith and he would be taken into custody.

(v) That both the bailors will be close relative of the petitioner who will give an affidavit giving genealogy as to how they are related with the petitioner. The bailors will also undertake to inform the Court if there is any change in the address of the petitioner.

(vi) That the bailors shall also state on affidavit that they will inform the Court concerned if the petitioner is implicated in any other case of similar nature after his release in the present case and thereafter the Court below will be at liberty to initiate the proceeding for cancellation of his bail on the ground of misuse.

(vii) That the petitioner will be well represented on each and every date of trial and if he fails to do so on two consecutive dates, his bail will be liable to be cancelled on this ground alone.

7. With the aforesaid observation and direction this application is disposed of.

(Mihir Kumar Jha, J)

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