

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.39443 of 2014

Arising out of PS.Case No. -147 Year- 2014 Thana -BIBHUTIPUR District- SAMASTIPUR

Santosh Anand, Son of Jai Ram Paswan, resident of Village- Shivnathpur,
P.S.- Bibhutipur, District- Samastipur.

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

Appearance :

For the Petitioner/s :

For the Opposite Party/s : Mr. Anil Kumar, APP

CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL ORDER

2 16-04-2015

No one appears for the petitioner.

The prayer of the petitioner, who is the husband facing prosecution for offence under Section 498A of the Indian Penal Code, for grant of anticipatory bail is based on two circumstances. Firstly, that he had got *ex parte* decree for divorce on 03.03.2011 and secondly, that it was the wife, who had tortured the petitioner and his family members.

From perusal of the F.I.R, it would, however, transpire that the allegations was made by the wife of the petitioner in the year 2014, saying that out of the marriage solemnized with the petitioner on 20.04.2008, she has a daughter aged about four and half hears, but she was being tortured only because she could give birth to a girl child. It is here the petitioner's allegation in the complaint petition becomes meaningful because the petitioner, in his matrimonial suit in Durgapur court, had claimed that the girl child borne on 27.03.2009 was out of adultery committed by the wife of the petitioner naming one Uttam

Sharma to be the father of the girl child of the wife of the petitioner.

This Court is not aware as to whether this *ex parte* decree in matrimonial suit passed by the Additional District Judge, Durgapur on 03.03.2011 is still surviving but then the *ex parte* decree is also a valid decree unless it is set aside by the competent court.

Considering all these aspects, this Court would direct the petitioner to surrender within a period of four weeks from today and on the date of such surrender, the informant, Babita Devi will also remain present in the court and if the court after hearing both of them finds that the *ex parte* decree of divorce dated 03.03.2011 passed by the Additional District Judge, Durgapur is still valid, the petitioner namely, Santosh Anand, will be granted bail on furnishing bail bond of Rs. 10,000/- with two sureties of the like amount each to the satisfaction of Judicial Magistrate, 1st Class, Rosera at Samastipur in connection with Bibhutipur P.S.Case No. 147/2014, subject to the following conditions:

- (i) That both the bailors will be close family relatives of the petitioner, who will undertake 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.
- (ii) That the affidavit shall clearly state that the petitioner is not accused in any other case and if he is, he shall not be released on bail.
- (iii) 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.

(iv) That the petitioner will be well represented on each and every date in course 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.

It is however made clear that if the aforesaid the ex parte decree of divorce is no longer subsisting and has been set aside by the competent court the petitioner on surrender will be taken under custody whereafter he will have to make prayer for regular bail.

(Mihir Kumar Jha, J)

Sujit/-

U			
---	--	--	--