

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.17039 of 2015

Arising Out of PS.Case No. -56 Year- 2014 Thana -MAHILA PS District- KATIHAR

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Md. Dulal son of Md. Majibur, Resident of Madhura Bari Raksi, P.S.-
Korha, Dist.- Katihar

.... Petitioner

Versus

1. The State of Bihar
2. Reshma Khatoon @ Reshma Parveen, D/o Nasir Akhtar, resident of
village Hathiya Diyara, P.S. Rautara, District Katihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Bhola Prasad, Adv.
For the Opposite Party/s : Mr. Birendra Kumar(App)
For the O.P.No.2 : Mr. Bimal Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL ORDER

4 17-08-2015 Heard learned counsel for the parties.

The petitioner facing allegation for offence under section 498A/34 of the Indian Penal Code and section 3/4 of the Dowry Prohibition Act comes out to say that he always wants/ is willing to keep his wife- O.P.No.2 with due respect and dignity that a wife would deserve in the hands of the husband but it is O.P.No.2-wife who does not want to have a peaceful relation. In support of the claim of the petitioner Mr. Bhola Prasad, learned counsel appearing on behalf of the petitioner, relies on an application filed by the petitioner for restitution of conjugal right.

Mr. Binod Kumar, learned counsel appearing on behalf of O.P.No.2, on the other hand, has submitted that all these are feigned and bogus claim of the petitioner because on two earlier

occasions O.P.No.2 had tried to patch-up the issue but on both the occasions after being taken back she had been not only mentally harassed and even physically assaulted by the petitioner.

Mr. Bhola Prasad, learned counsel appearing for the petitioner, in reply says that this again is a false allegation and the petitioner undertakes that if this time O.P.No.2 shall accompany the petitioner to his house she will not be given any sort of trouble either physically or mentally.

Considering the fact that there is possibility of settlement between the parties, especially when learned counsel for O.P.No.2 also has conveyed that O.P.No.2 shall like to restore his conjugal relationship, this Court would direct both the petitioner and O.P.No.2 to appear before the court below on 28th August, 2015 when the court below shall grant provisional bail to the petitioner for a period of three months on the following conditions:

(i) That both the bailors will be a 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.

(ii) That the bailor shall also state on affidavit that he 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 bail on the ground of misuse.

(iii) That the petitioner will give an undertaking that he will receive the police papers on the given date and be present on the date fixed for charge and if he fails to do so on two given dates and delays the trial in any manner, his bail will be liable to be cancelled for reasons of misuse.

(iv) 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.

After expiry of a period of three months both the petitioner and O.P.No.2 shall again appear before the court below and if the behaviour of the petitioner towards his wife- O.P.No.2 is found to be satisfactory, the court below shall now extend the provisional bail for a period of six months.

Upon expiry of the aforesaid period of six months both the petitioner and O.P.No.2 shall again appear before the court below and if this time the court below is again satisfied with the conduct of the petitioner towards his wife, the provisional bail shall be

extended for a period of one year.

After expiry of the aforesaid period of provisional bail if the court below is satisfied that the relationship between the petitioner and O.P.No.2 has improved, it shall confirm the provisional bail to the petitioner but, on the other hand, if any point of time it is complained by O.P.No.2 that she was again assaulted or subjected to any mental or physical cruelty by the petitioner or his family members during his stay with the petitioner in his house, the provisional bail of the petitioner shall be immediately cancelled and he shall be taken into custody subject to an enquiry made by the court below and affording opportunity of personal hearing to the petitioner.

It goes without saying that if O.P.No.2 does not appear on the date fixed i.e. 28.8.2015 or herself gives in writing to the court below that she does not want to live with the petitioner, there would be no question of petitioner being released on provisional bail and in that case the petitioner shall be granted bail on the condition indicated above.

(Mihir Kumar Jha, J)

surendra/-

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