

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.18575 of 2015

Arising Out of PS.Case No. -119 Year- 2014 Thana -SALKHUA District- SAHARSA

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Kishan Kumar Rai @ Kishan Kumar Son of Sudhir Kumar Rai Resident of Village Murgiyachak, Ward No. 9 Police Station Khagaria, District Khagaria.

.... Petitioner/s

Versus

1. The State of Bihar
2. Khushbu Kumari Daughter of Pradip Yadav Resident of Village Kabirpur (O.P. Chiraiya), Police Station Salkhua, District Saharsa , at Present resident of Sudhir Kumar Rai, Village Murgiyachak, Ward No. 9 Police Station Khagaria, District Khagaria.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Viveka Nand Singh, Advocate.
For the Opposite Party/s : Mr. Bhanu Pratap Singh (App)

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL ORDER

3 16-07-2015

Heard learned counsel for the parties.

Pursuant to earlier order of this Court dated 15.06.2015, both the petitioner and the O.P. No. 2 have appeared. This Court has heard them as well as their learned counsels and would find that there is every possibility of their striving for a better future in their conjugal life. In fact, the O.P. No. 2 is only aggrieved on account of certain misbehaviour towards her father by the petitioner and/or her family members whereas the petitioner is aggrieved on account of alleged repeated interference being made by his father-in-law i.e. the father of the O.P. No. 2.

Fortunately, for this, both the father of the petitioner and the O.P. No. 2 have also appeared in person and this Court had also an opportunity to discuss the issues with them. They appear to be very

clear in mind that they do not want to make interference in the married life of their son and daughter namely the petitioner and the O.P. No. 2, respectively.

The petitioner is serving in Indian Armed Forces and is presently undergoing training at Jabbalpur and likely to go back to his place of posting at Jhansi. He also informs this Court that at Jhansi, there shall be a family accommodation available to him where he can take his wife O.P. No. 2 for living together within a period of three months from today. He has also assured this Court that he will always keep his wife always with him at his place of posting unless he has been sent in field posting where an armed force personnel cannot keep his family.

The wife/O.P.No. 2 also is fully prepared to live with the petitioner and his family members. In fact, she now has also stated before this Court that under the changed circumstances and particularly for last few months when she has been living with the family members of her husband/the petitioner under an order of the Family Court, nothing untoward has happened which may make her apprehensive of any misbehavior by the petitioner and/or by the family members of her husband, the petitioner.

Learned counsel for the O.P. No. 2 has however pointed out that there has not been a perfect personal understanding between the petitioner and the O.P. No. 2, but then this Court will not give much weightage to this aspect for the time being keeping in view that not

only the petitioner and the O.P. No. 2 have hardly lived together for a reasonable period of time but have also been a litigating terms. As noted above, the O.P. No. 2 had filed the present criminal case for offence under Section 498-A of the Indian Penal Code against the petitioner and his family members and the petitioner has also filed a divorce case against the O.P. No. 2. In such a situation, the emergence of a situation of strained relationship is quite natural.

Keeping in view all these aspects and specially a firm assurance given by the petitioner before this Court that he is ready to keep his wife with all due respect and dignity, this Court, for the time being, in order to test bona fide of the petitioner, would direct him to first comply with his own undertaking of withdrawing the divorce case specially when he claims that now he has no grievance against his wife on her agreeing to live together.

The petitioner has, in fact, given undertaking to withdraw his divorce case within a period of 15 days from today and hence, if an application is filed by the petitioner before the court below for withdrawal of such divorce case, the same may be allowed by the Family Court forthwith.

The petitioner, having withdrawn the divorce case, would appear before the court below within a period of one week from the date of withdrawal of the divorce case and the court below shall grant provisional bail to the petitioner namely Kishan Kuamr Rai @ Kishan for a period of six months on furnishing bail bond of Rs. 10,000/- with

two sureties of the like amount each to the satisfaction of the learned Judicial Magistrate, 1st Class, Saharsa in connection with Salkhua P.S.Case No. 119 of 201 subject to the following condition:

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- (i) That the petitioner would give a written undertaking that he shall not only treat his wife with due respect and dignity as a wife would deserve in the hands of the husband but would also take her along with him at his place of posting at Jhansi and/or any other place of his posting in a maximum period of three months from today.
 - (ii) Till the time the petitioner would take the opposite party no. 2 to his place of posting, she (O.P. No. 2) shall continue to live with the family members of the petitioner at his ancestral place where she is presently residing and in this period the father of O.P. No. 2 shall never go to the house of petitioner.
 - (iii) The O.P. No. 2, during her stay either with the family members of the petitioner and/or the petitioner, will be provided facility of talking to her parents on phone as and when she would like to contact them telephonically.
 - (iv) The petitioner and/or his family members, in the period O.P. No. 2 would stay in the house of the petitioner along with them, shall also make an

arrangement for the O.P. No. 2 to visit her father's place at least once in a month for a maximum period of seven days and her return journey to the home of petitioner shall also be the responsibility of the petitioner and/or his family members.

(v) Upon being granted provisional bail for a period of six months, the petitioner shall take his wife O.P. No. 2 to his place of posting as early as possible and in no case beyond the period of three months from today and after they have lived together in this period of six months of provisional bail, the petitioner would appear before the court below alongwith his wife and if the court, on making enquiry from the O.P. No. 2, is fully satisfied that O.P. No. 2 was treated with all respect and dignity that a wife would deserve in the hands of the husband, the court below shall confirm the provisional bail of the petitioner.

(vi) The O.P. No. 2, after confirmation of bail of the petitioner ,would file an application for withdrawal of the criminal case filed by her and the court below, on being satisfied of the bona fide of such application for withdrawal by O.P. No. 2, shall accord leave for such withdrawal.

(vii) That both the bailors will be a close relative 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.

(viii) 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 bail on the ground of misuse.

(ix) 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.

(Mihir Kumar Jha, J)

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