

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.3159 of 2016

Arising Out of PS.Case No. -797 Year- 2004 Thana -PATNA COMPLAINT CASE District-
PATNA

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1. Vijay Prasad S/o Ram Govind Prasad R/o Village Chotki Nuaon P.S.-
New Bazar, District- Buxar. A/p 21D, Pocket-E, Dilshad Garden, P.S.
Seema Puri, Delhi.

.... Petitioner/s

Versus

1. The State of Bihar
2. Bindu Kumari W/o Vijay Prasad, D/o Sri Deo Narayn Prasad Quarter No.
90A, Ashiana Nagar, P.S.- Rajiv Nagar, District- Patna.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Kumari Jyoti

For the Opposite Party/s : Mr. Manish Kr. 2(App)

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR
TRIVEDI
ORAL ORDER

2 22-06-2016 Instant petition has been called out whereupon
petitioner has been heard in detail.

Learned counsel for the petitioner has virtually raised a grievance over the procedural law as well as with regard to appreciation of facts by the courts and to substantiate the same, it has been submitted that it happens to be the high time when the custody of the petitioner for an offence punishable under Sections 406, 498(A) of the IPC as well as 3 & 4 of the Dowry Prohibition Act is allowed to continue since 27.11.2015. Furthermore, it has also been submitted that at an earlier occasion also petitioner had remained under custody for substantial period. The only deficiency at his part happens to be that an earlier occasion while petitioner was granted provisional bail under Criminal Misc. No. 20383 of 2014 to facilitate compromise amongst the spouses,

petitioner remained defiant by keeping his absence and further, approaching the Hon'ble Apex Court under SLP (Criminal) Nos. 3927-3928 of 2014 which was ultimately rejected on 04.08.2014.

Furthermore, it has also been submitted that spouses are on bitter terms whereupon, so many cases are pending including that of divorce. It has also been submitted that more than 4-5 lakhs have already been paid to the wife by way of maintenance. In the aforesaid background, as well as considering the period of detention inconsonance with the punishment having prescribed therefor, petitioner should be released on bail.

As neither, the opposite party no.2, nor the State is present on account thereof, their plea could not be heard.

Whenever there happens to be non-bailable offence, the right of the accused to seek bail depends upon the wisdom of the court which, during the course of consideration of the prayer, not only considers the allegation so attributed rather the criminal antecedent, the conduct of the accused and further, there happens to be any scope of putting an interference in the administration of justice by way of his absence, threatening of the witnesses, etc. True it is that the spouses are on litigating terms. It is equally true that at an earlier occasion taking into consideration the submissions made on behalf of the petitioner, was granted provisional bail to facilitate the compromise. As the compromise could not arrived at, on account thereof, petitioner was directed to

surrender before the learned lower court so that hearing of the bail petition on its merit be effected and for that, a time was granted which again been flouted and then, vide order dated 20.08.2014 under Criminal Misc. No. 20383 of 2014 peremptory order was passed which was challenged before the Hon'ble Apex Court, as referred above and lastly having been refused there from, ultimately forced the petitioner to surrender before the learned lower court. Therefore, the conduct of the petitioner suggests that instead of abiding with the order of the court, which he succeeded to get on account of an offer having been made at his end, and then disregarded. That being so, court still apprehends over his future conduct, by way of his absence in case is bailed out, as the petitioner failed to convince which may have adverse impact over prospect of trial.

Therefore, for the present, I do not see the prayer of the petitioner entertainable and is accordingly rejected. However, a liberty is given to the petitioner to pray before the learned lower court with an undertaking that his presence will be available during course of trial, and the learned lower court after having been convinced with his undertaking released him on bail to his own satisfaction after examination of wife of the petitioner or, in case of delay, even before her examination.

(Aditya Kumar Trivedi, J)

siddharth/-

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