

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.39711 of 2015

Arising Out of PS.Case No. -1808 Year- 2011 Thana -BHOJPUR COMPLAINT CASE District-
BHOJPUR

=====

1. Muktinath Mishra, son of Narvedeshwar Mishra, resident of Shyama Rauts' Galli, Ward NO. 08, Dumrao, Thana Dumraon, District Buxar.

.... Petitioner/s

Versus

1. The State of Bihar
2. Saroj Bala w/o Muktinath Mishra & daughter of Prem Kumar Mishra, resident of village Bihar Colony, Meerganj, Ara, P.O Ara, Town and District Bhojpur.

.... Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Madan Prasad Singh No-2

For the Opposite Party/s : Mr. Ajay Kumar 1(App)

=====

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

12 20-09-2016 Heard learned counsels for the petitioner and the State.

The petitioner being the husband of the complainant is apprehending arrest in a complaint case in which processes were directed to be issued after cognizance being taken under Section 498A of the Indian Penal Code and sections 3 and 4 of Dowry Prohibition Act.

The basic accusation is of torture for non fulfillment of dowry demands.

The petitioner and the complainant are present in court.

It is submitted by learned counsel for the petitioner that the marriage of the petitioner with the complainant has never been

consummated due to apathetic attitude of the complainant but a supplementary affidavit has been filed to the effect that the petitioner is ready to keep the complainant as wife with full dignity and honour and has not performed second marriage. Statement to the aforesaid effect has been made in paragraph no. 2 of the supplementary affidavit which reads as follows:

“That the petitioner of this case has not married with another lady. He is ready to keep his wife and maintain her with full dignity and honour.”

On the contrary, in paragraph 5 of the counter affidavit filed on behalf of O.P. No. 2, it is specifically stated that the petitioner has performed second marriage with Alka Kumari, daughter of Sri Rajendra Mishra, village – Madhopur Mishrauli, P.O.- Birno, P.s.- Birno, District – Gazipur (UP) and has a son with the second wife namely Shivam. Paragraph 5 of the counter affidavit reads as follows:

“That a supplementary affidavit has been filed on 29.3.2016 on behalf of the petitioner in which it has been mentioned that the petitioner has not married with another lady which is totally false because the petitioner has married another lady namely Alka Kumari, daughter of Sri Rajendra Mishra, village – Madhopur Mishrauli, P.O.- Birno, P.s.- Birno, District –

Gazipur (UP) in the year 2013 and out of their wed-lock a male child namely Shivam was born.”

Hence, the complainant is not ready to resume the conjugal life. On specific query made that if on enquiry it is found that the petitioner has not performed second marriage, whether the complainant will resume the conjugal life, the complainant replied that she is not ready to resume her conjugal life in either circumstance.

In view of the inconsistent stand of the parties, let the above named petitioner be released on provisional anticipatory bail for six months in the event of arrest or surrender before the learned Court below within a period of six weeks from today, on furnishing bail bond of Rs. 10,000/- (ten thousand) with two sureties of the like amount each to the satisfaction of learned SDJM, Bhojpur at Ara in connection with Complaint Case No. 1808 C of 2011 subject to the conditions as laid down under Section 438(2) Cr.P.C.

Let the learned court below conduct an enquiry and if on enquiry it is found that the petitioner has not performed second marriage then the provisional anticipatory bail of the petitioner will be confirmed but the learned court below will not confirm the provisional bail if the substantial proof comes that the petitioner

has performed second marriage and in that eventuality the petitioner will surrender and pray for bail.

(Dinesh Kumar Singh, J)

Anil/-

U		T	
---	--	---	--