

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.21270 of 2017

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Fouzia Arshi

.... Petitioner/s

Versus

State of Bihar & Anr

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Mahmood Alam, Advocate

For the Opposite Party/s : Mr. Sri Chandra Bhushan Prasad, Advocate

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

2 10-05-2017

Heard.

The present application has been filed for modification of the order dated 22.03.2017, passed in Criminal Miscellaneous No.12012/2017 to the extent that since opposite party no.2 failed to comply the undertaking given before this Court, hence, he may be directed to surrender.

The factual matrix of the case is that opposite party no.2 being husband of the petitioner was granted provisional anticipatory bail for six months in connection with Gardanibagh P.S. Case No.370/2015, registered under section 498A of the Indian Penal Code and section 3/4 of the Dowry Prohibition Act, on the basis of his submission that he is ready to keep the complainant petitioner as wife with full dignity and honour and the denial of the factum of second marriage, statements to that effect has been made in paragraph nos. 9(v) and (iv) of the petition, which read as under :-



“(v) That the petitioner is still ready to keep the informant with himself if she live with this petitioner peacefully with dignity at home and not to run away to her sister house etc etc.”

“(iv) That the petitioner found that the informant was not interested to live with him and old mother only in family and going always out side of the country to her sister at USA and Delhi and in spite of attempt of this petitioner and filing application before Emarte Sariya, refused by her and thereafter filing this false case, and as such the old mother was facing too much problem for want of lady at home to see her and this petitioner, and as the informant was away for the last two years from the house of this petitioner, upon the advice of her mother this petitioner arranged for his 2nd marriage. But no marriage was solemnized.”

Both sides agreed to appear before the learned Court below on 30.03.2016, when opposite party no.2 was to take the complainant along with him and restore the matrimonial life. The provisional anticipatory bail of opposite party no.2 was to be confirmed by the learned Court below in three eventualities i.e., (i) on substantial restoration of matrimonial harmony or (ii) if the informant gets reluctant to reconcile the issue; and (iii) or if the informant fails to appear before the learned Court below. It was also stipulated in the order that the provisional anticipatory bail of opposite party no.2 will not be confirmed by the learned Court below, if substantive proof comes that opposite party no.2 has performed second marriage and in that eventuality the opposite party no.2 will surrender and pray for regular bail. Subsequently,



the opposite party no.2 preferred Criminal Miscellaneous No.12012/2017 for modification of the earlier order dated 15.03.2016, passed in Criminal Miscellaneous No.4212/2016 to the extent of confirming the provisional bail granted to the opposite party no.2. However, this Court declined to interfere and modify the earlier order, but directed the learned Court below to pass appropriate order for release of opposite party no.2 on provisional bail for four months and to take initiative to get the issue reconciled. The provisional anticipatory bail was directed to be confirmed by the learned Court below on the issue being reconciled or, the petitioner refuses to reconcile the issue. Accordingly, the modification application was disposed of.

It is submitted by learned counsel for the petitioner that the opposite party no. 2 is still enjoying the privilege of provisional bail in spite of the fact that provisional bail was granted only for four months and the said period has already lapsed.

In view of this Court, since opposite party no.2 was subsequently granted bail by learned Court below hence, the remedy for petitioner lies before the learned Court below, if the period of provisional bail of opposite party no.2 has lapsed and the same has not been extended.

Hence, the petitioner is at liberty to file appropriate



application before the learned Court below for passing necessary orders for appearance of opposite party no.2.

Accordingly the application is disposed of.

(Dinesh Kumar Singh, J)

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