

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.55837 of 2015

Arising Out of PS.Case No. -154 Year- 2014 Thana -SULTANGANJ District- PATNA

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1. Saiyad Muhammad Saqlain @ Md. Saqlain S/o Shahid Mehndi, R/o Begamganj, Ram Nagar Bagh, House No. B/217, Dist- Barabanki, U.P.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Shabab Fatima, D/o Saiyad Akbar Hussain, R/o Mohalla Dargah Road Near Karbala, Patna City, P.S. Sultangaj, Patna.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Avanish Kumar Singh

For the Opposite Party/s : Mr. M.K. Khare(App)

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

11 09-03-2017 Heard learned counsels for the petitioner, informant and the State.

The petitioner being husband of the informant is apprehending arrest in a case registered for the offences punishable under Sections 498A,323,504,506,379 and 406 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 informant are present in court. Learned counsel for the petitioner submits that the petitioner admits his marriage with the informant on 7.9.2003 as per Muslim rituals and subsequently birth of two daughters and one son. The



children are staying with the petitioner and he is providing adequate education to them. The petitioner initially claimed to have given Talaq on 10.7.2014 but it was treated ineffective in view of the claim of the informant that she was under menstrual cycle, hence, subsequently the petitioner claims to have given Talaq on 14.8.2014 and this has been confirmed by the opinion of a Maulvi of Imam Juma Sahi Maszid, Lucknow. The informant has filed Maintenance Case No. 116M of 2015 which is pending before the learned Principal Judge, Family Court, Patna. The informant also claimed the guardianship of three children vide Guardianship Case No. 21 of 2015 but the said claim has been rejected by the learned Principal Judge, Family Court, Patna vide order dated 22.7.2015 against which the informant has filed Misc. Appeal No. 501 of 2015 which is pending before this Court.

In the circumstances, the petitioner is not ready to keep the informant.

Learned counsel for the informant submits that the marriage between the petitioner and the informant and birth of three children are not in dispute but subsequently the petitioner tortured the informant for non-fulfillment of further dowry demand and driven her out from the matrimonial house. She brought the children with her from Barabanki to Patna but



subsequently the petitioner took the children forcefully. The informant specifically denies the factum of Talaq. So far as subsequent Talaq dated 14.8.2014 is concerned, it has been pleaded for the first time in the present proceeding. So far as guardianship case is concerned, the claim of the informant has been rejected on the ground of lack of territorial jurisdiction to the court of the Principal Judge, Family Court, Patna which is under challenge in Misc. Appeal No. 501 of 2015. The informant is even deprived of meeting her children.

Learned counsel for the petitioner further submits that in alternative, the petitioner is ready to make payment of Rs.4000/- per month to the informant from April, 2017 by depositing the same in the bank account of the informant by second week of every month. However, the said payment will have no bearing with regard to the claim and counter claim of the parties, particularly, with regard to Talaq. The petitioner will also allow the informant to meet the children at least once in every two months.

Learned counsel for the informant submits that though the informant denies the factum of Talaq and is ready to resume the conjugal life but reluctantly she is ready to accept the present offer of the petitioner and undertakes to provide the bank account



number of the informant to the petitioner within three weeks by submitting the same on affidavit before the learned court below.

Considering the rival submission of the parties, without giving any opinion with regard to the factum of Talaq, in order to save the informant and children from destitution and vagrancy and allowing the children to carry on their educational pursuits properly with a lurking hope that the issue may reconcile in future, let the above named petitioner be released on anticipatory bail in the event of arrest or surrender before the learned Court below within a period of twelve 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 ACJM, Patnacity in connection with Sultanganj P.S. Case No. 154 of 2014 subject to the conditions as laid down under Section 438(2) Cr.P.C.

The bail bond of the petitioner will be accepted by the learned court below on filing affidavit to the effect that the petitioner will make the aforesaid payment to the informant regularly and allow the informant to meet the children once in two months.

The aforesaid payment will be subject to any order being passed in matrimonial or maintenance proceeding but the said payment will have no bearing on the claim and counter claim



of the parties, particularly, with regard to Talaq.

Three consecutive defaults in making payment by the petitioner will give liberty to the informant to file an application for cancellation of bail of the petitioner.

The present order, in no way, will preclude the parties to resolve the issue otherwise.

(Dinesh Kumar Singh, J)

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