

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.568 of 2017

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1. Mukesh Jha @ Mukesh Kumar Jha, son of Narendra Nath Jha, Resident of village - Dhakjari, P.S. - Benipatti, District - Madhubani.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Smt. Puja, wife of Mukesh Kumar Jha, daughter of Amrendra Kumar Jha, At present residing at Mohalla - Mishra Toli, P.S. - Town (Darbhanga), District - Darbhanga.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Krishna Nand Jha, Advocate
For the Opposite Party/s : Mr. Sri Arbind Kumar Pandey

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

4 22-03-2017 Heard learned counsels for the petitioner,

complainant and the State.

The present application has been filed for modification of the order dated 04.01.2016 passed in Criminal Miscellaneous No.58575/2015 to the extent of confirmation of the provisional bail granted to the petitioner for one year.

The petitioner being the husband of the complainant apprehending arrest in a complaint case wherein processes were directed to be issued after cognizance being taken under sections 384, 380, 406, 323 and 498A of the Indian Penal Code and 3/4 of the Dowry Prohibition Act, preferred Criminal Miscellaneous No.58575/2015 with a prayer for anticipatory bail.



The basic accusation is of torture for non fulfillment of dowry demands and making attempt to extort money from the complainant's family.

On instruction, it was submitted by learned counsel for the petitioner that the petitioner admits his marriage with the complainant and is ready to keep her as wife with full dignity and honour. Statement to that effect has been made in paragraph no.2 of the main petition, which reads as under :-

"That the petitioner was/is ready to keep the complainant with full respect and dignity, according to this capacity."

It was further submitted that the petitioner has filed Matrimonial Suit No. 719/2014 for restitution of conjugal life and in spite of issuance of notice in the said suit, the complainant failed to appear. Considering the stand of the petitioner, this Court vide order dated 04.01.2016, passed in Criminal Miscellaneous No. 58575/2015, granted provisional bail to the petitioner, for one year with a liberty to the learned Court below to issue notice to the complainant and on her appearance the petitioner will take her to keep her as wife with full dignity and honour. The provisional bail of the petitioner was to be confirmed in three eventualities – (i) if the matrimonial harmony is substantially restored or (ii) if the



complainant fails to appear before the learned Court below or (iii) if the complainant deliberately gets reluctant to reconcile the issue. Subsequently, the petitioner preferred Criminal Miscellaneous No.33150/2016 for modification of the order dated 04.01.2016, passed in Criminal Miscellaneous No. 58575/2015 with a similar prayer for confirming the provisional bail, since the complainant failed to appear before the learned Court below for resuming the conjugal life. The said criminal miscellaneous application was disposed of vide order dated 17.08.2016, treating the modification application as premature. Thereafter, the present modification application has been filed.

It is submitted by learned counsel for the petitioner that after grant of provisional bail, vide order dated 04.01.2016, passed in Criminal Miscellaneous No. 58575/2015, the petitioner appeared before the learned SDJM, Darbhanga, by filing petition on 18.01.2016 reiterating his willingness to keep the complaint as wife with full dignity and honour, but in spite of service of notice issued to the complainant by the learned Court below, she failed to appear. Thereafter, the petitioner filed petitions for confirmation of the provisional bail on 16.03.2016, 24.06.2016, 13.07.2016, 22.08.2016 and 22.11.2016. It is further submitted that subsequent to grant of provisional bail to the petitioner, the complainant



opposite party no.2 filed Matrimonial Suit No.51 of 2016 with a prayer for dissolution of marriage.

The ordersheet of the said suit has been brought on record as annexure-4 to the present modification application. It appears from the order dated 11.11.2016 passed in Matrimonial Suit No.51/2016, by the learned Family Judge, Darbhanga that the petitioner expressed his willingness to keep the complainant as wife, but she remained adamant not to resume the conjugal life. The order dated 11.11.2016 reads as under :-

"Both sides file their attendance. Both sides appeared in the Chamber. Reconciliation proceeding started. The Court tried its best to reconcile the dispute. Opposite party/husband has expressed his willingness to keep his wife and wants to continue his marriage relation whereas applicant/wife is adamant to not to continue her marriage. Applicant/wife is not even to continue any type of her interaction with the opposite party in future. Ultimately, reconciliation failed.

Applicant to produce witness after framing of issue.

Put up on 07.12.2016 for settlement of issue."

It is further submitted by learned counsel for the petitioner that the petitioner is still ready to keep the complainant as wife.



In pursuance to notice issued to the complainant opposite party no. 2, vide order dated 18.01.2017, Mr. Girish Chandra Jha, learned counsel has entered appearance on her behalf and submits that the period of provisional bail lapsed and the witnesses are being threatened.

Learned counsel for the petitioner further submits that the bail bond of the petitioner has still not been cancelled.

Considering the rival submissions of the parties, in view of the fact that the petitioner is still willing to keep the complainant as wife with full dignity and honour, the complainant is not willing to resume the conjugal life and had filed a matrimonial suit with a prayer for divorce, the period of provisional bail granted to the petitioner in connection with Complaint Case No. 1462/2014, pending before the learned SDJM, Darbhanga, is extended up to 17th of April, 2017.

Learned Court below is expected to confirm the provisional bail of the petitioner, if from the record it transpires that the bail bond of the petitioner has not been cancelled. But, if it is found that the bail bond of the petitioner has already been cancelled, in that eventuality, the petitioner will surrender and pray for regular bail. The said prayer would be considered in view of the fact that on merit the petitioner has been granted



anticipatory bail, hence, the same be disposed of preferably on the same day.

Accordingly, the modification application is disposed of.

(Dinesh Kumar Singh, J)

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