

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Miscellaneous No.42758 of 2016**

Arising Out of PS.Case No. -364 Year- 2015 Thana -KHAGARIA COMPALINT CASE District-  
KHAGARIA

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Sirajul Shah @ Md. Sirajul Shah, S/o Md. Siddik Shah, Resident of village  
- Khoparaganj Masjid Tola, P.S. Udakishunganj, District - Madhepura

.... .... Petitioner/s

Versus

1. The State of Bihar
2. Rubi Khatoon, D/o Md. Kaayum, Resident of village - Rauna, P.S.  
Alauli, District - Khagaria

.... .... Opposite Party/s

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**Appearance :**

For the Petitioner/s : Mr. Binod Kumar

For the Opposite Party/s : Mr. Sri Indra Kumar Singh

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**CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH**

**ORAL ORDER**

12/ 04-09-2017

Heard Mr. Binod Kumar, learned counsel for the  
petitioner, Mr. Ranjeet Kumar Singh, learned counsel for the  
complainant-opposite party no. 2 and Mr. J.N. Thakur, learned  
counsel for the State.

The petitioner and the complainant-opposite  
party no. 2 are present in the Court.

The petitioner is apprehending his arrest in a  
complaint case wherein processes have been directed to be  
issued after cognizance being taken for the offences punishable  
under Sections 498A, 494 of the Indian Penal Code and Section



4 of Dowry Prohibition Act.

The prosecution case, as per the Complaint Case No. 364C of 2015 filed on 21.04.2015, alleging therein that the marriage between the petitioner and complainant was performed on 14.05.2014 at Noida, one year prior to the lodging of the complaint. The relation between the petitioner and the complainant was cordial for two months and thereafter the petitioner started demanding Rs.50,000/- for the purpose of business and on non-fulfillment of the demanded amount, the complainant was brutally assaulted. It is also alleged that the petitioner made several attempts to administer poison to the complainant and ultimately, she was driven out from the matrimonial house, since the petitioner performed second marriage. On examination of the complainant on S.A. and recording the statement of the enquiry witnesses, processes have been directed to be issued after cognizance being taken under Sections 498A, 494 of the Indian Penal Code and Section 4 of the Dowry Prohibition Act.

It is submitted by learned counsel for the petitioner that the complainant was earlier married with the elder brother of the petitioner, namely, Md. Siraj Shah in the year 2004 and thereafter, the complainant gave birth to two



children, but the brother of the petitioner died in the year 2010 and, thereafter, the complainant left the matrimonial house and started residing with her parents. Subsequently, the complainant pressurized him to marry her and only when the petitioner performed marriage with with Gulsan Praveen on 31.03.2015, the present complaint was lodged on 21.04.2015. The complainant has deliberately suppressed the factum of her first marriage with the elder brother of the petitioner and birth of two children. The signature of the petitioner was forcibly taken on the Nikahnama for which the petitioner has filed Informatory Petition No. 1200 of 2014 before learned CJM, Madhepura on 14.08.2014 and thereafter the present complaint was filed on 21.04.2015. The petitioner has no objection if the complainant resides in the native place with children in Rampur Khopraganj in the district of Madhepura.

Learned counsel for the complainant-opposite party no. 2 submits that he is not disputing this fact that the complainant was earlier married with elder brother of the petitioner but the said fact could not be incorporated in the complaint petition by inadvertence due to the negligence of the learned counsel for the complainant before the learned Court below though he was instructed about earlier marriage also. The



complainant is ready to resume the conjugal life in spite of the fact that the petitioner has performed second marriage. However, the complainant admits her earlier marriage with the elder brother of the petitioner and birth of two children. The Nikah between the complainant and petitioner was performed and the Nikahnama has been brought on record by way of counter affidavit.

Considering the fact that the marriage between the petitioner and the complainant is in dispute and both sides are not ready to reconcile the issue, the matter has been pending before this Court since about last one year and mostly the matter has been adjourned for the appearance of the petitioner, as also the fact that both sides are still ready to get the issue mediated, this Court is not inclined to adjourn the matter any further.

In the circumstances, let the above named petitioner be released on anticipatory bail provisionally for four months in the event of his 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 Sub-divisional Judicial Magistrate, Khagaria in connection with



Complaint Case No. 364(C) of 2015, subject to the conditions as laid down under Section 438(2) of the Cr.P.C.

Let the learned SDJM, Khagaria try to get the issue resolved through mediation. On substantial resolution of the issue, the provisional bail will be confirmed by the learned Court below.

Accordingly, this application is disposed of.

**(Dinesh Kumar Singh, J.)**

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