

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.10277 of 2016

Arising Out of Complaint Case No. -499 Year- 2014 Thana -BUXAR COMPLAINT CASE District-
BUXAR

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1. Rajababu Upadhyay, Son of Late Parasnath Upadhyay Resident of
Village- Gahmar, Gangaram Patti, P.S.- Gahmar, District- Ghazipur (U.P.)

.... Petitioner/s

Versus

1. The State of Bihar.
2. Smt. Saroj Upadhyay @ Rani W/o Rajababu Upadhyay, Daughter of Sri
Rikheshwar Nath Pathak @ Punnu, Resident of Village- Pandeypatti,
Buxar, P.S.- Buxar (M), District- Buxar.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Anirudh Mishra

For the Opposite Party/s : Mr. U.L.Verma(App)

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

10 21-04-2017 Heard learned counsels for the petitioner, complainant
and the State.

The petitioner being the husband of the complainant is
apprehending arrest in a complaint case wherein process has been
directed to be issued after cognizance being taken for the offences
punishable under Sections 498A/34 of the Indian Penal Code and
Section 4 of the Dowry Prohibition Act.

Basic accusation is of torture for non-fulfillment of
dowry demand.

It is submitted by Mr. Jagdish Prasad, learned counsel
for the petitioner that the petitioner admits his marriage with the



complainant but petitioner has filed Matrimonial Suit No. 2873 of 2013 with a prayer for divorce on the ground of desertion.

There is dispute with regard to paternity of the child born subsequent to the marriage. The issue with regard to DNA matching of the child with the petitioner is pending before the court below. The petitioner is an army personnel. The petitioner has filed Matrimonial Suit No. 2873 of 2013 on account of desertion and thereafter the present complaint has been filed. The principal Judge, Family Court, Buxar vide order dated 03.11.2015 passed in Maintenance Case No. 51 of 2014 directed the petitioner to pay interim maintenance of Rs. 4000/- for the maintenance of the child from the date of filing of Maintenance Application No. 51 of 2014 i.e 08.05.2015, but the petitioner has neither complied the said order nor has challenged the same till date.

However, it is further submitted by Mr. Jagdish Prasad, learned counsel for the petitioner that if the petitioner is granted bail the he is ready to make payment of 25 per cent of the maintenance amount including arrears at the time of filing of the bail bond and the rest 75 per cent amount shall be paid in three monthly installments within a period of next three months and will regularly make payment of the said amount by 15th day of every succeeding month as directed by the learned court below.



Mrs. Anita Kumari Singh, learned counsel for the complainant submits that the complainant is still ready to resume the conjugal life but the petitioner by not making the payment of maintenance amount has put the complainant to destitution and vagrancy and above all the minor child is suffering from valve problem and is being treated at AIIMS, New Delhi. Hence, at present she is mainly concerned with regard to payment of maintenance amount. She has no objection to the mode of payment offered by the petitioner. The complainant undertakes to submit her bank account number on affidavit before the learned court below.

Considering the rival submissions of the parties, filing of matrimonial suit at earlier point of time and the present stand of the petitioner that he is ready make payment of the maintenance amount passed in Maintenance Case No. 51 of 2014, and the same being accepted by the complainant which at least, at present will save the complainant and the minor child from destitution and vagrancy, let the above named petitioner be released on anticipatory bail provisionally for five months, in the event of arrest or surrender before the learned Court below within a period of 12 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 the learned, SDJM, Buxar, in connection with Complaint Case No.499 C/2014, subject to the conditions as laid down under Section 438(2) Cr.P.C.

The provisional bail of the petitioner will be confirmed by the learned Court below if the petitioner will make payment of entire arrears of the maintenance amount within a period of four months as offered by the petitioner on filing proof to that effect.

It is expected that the said amount would be paid by depositing the same in the bank account of the complainant.

It is expected from the complainant to submit her bank account number on affidavit before the learned court below within a period of two weeks.

(Dinesh Kumar Singh, J)

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