

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No 43761 of 2016

Arising Out of PS.Case No. -2564 Year- 2013 Thana -GOPALGANJ COMPLAINT CASE District-
GOPALGANJ

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Seraj Ansari @ Saraj Ansari Son of Late Khelu Ansari, R/o Village- Pagra
Tola Sahdigri, P.S.- Vijayipur, District- Gopalganj.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Mairun Nesha, W/o Seraj Ansari, At Present Late Habibullah Ansari, R/o
Pare Ke Kushahari, P.S.- Rampur, Distt.- Dewariya (U.P.).

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ranjeet Kumar Pandey

For the Opposite Party/s : Mr. Sri Surendra Kumar

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CORAM: HON'BLE MR JUSTICE DINESH KUMAR SINGH

ORAL ORDER

5 03-04-2017

Heard learned counsel for the petitioner and Mr J N

Thakur, learned counsel for the State. None appears for Opposite
Party No 2.

Notices were issued vide order dated 06.10.2016 to
Opposite Party No 2 as well as to her counsel appearing before the
learned Court below. The service report dated 05.01.2017 at Flag
A reflects that the notice has been received by counsel of OP No 2
appearing before the learned Court below. But in spite of valid
service of notice, Opposite Party No 2, the complainant chose not
to appear. This Court, vide order dated 23.02.2017, adjourned the
matter for 31st of March, 2017 since none appeared on behalf of
Opposite Party No 2. Today also none is appearing for Opposite



Party No 2.

The petitioner, being the husband of the complainant, is apprehending arrest in Complaint Case No 2564 of 2013 (Trial No 862 of 2016) registered for the offence punishable under Sections 406, 323, 498A of IPC wherein process has been directed to be issued after taking cognizance for the offence punishable under Sections 323, 498A of IPC.

Basic accusation is of torture after 32 years of the marriage. It is also alleged that the petitioner has performed second marriage in the year, 2005. Learned counsel for the petitioner submits that the petitioner admits his marriage with the complainant. The petitioner performed second marriage since there was no issue from the first marriage and, thereafter, also the complainant was ready to live with the petitioner. The petitioner is still ready to keep the complainant as wife with dignity and honour, statement to that effect has been made in paragraph 13 of the petition which reads as follows:

“That the petitioner is ready to keep the complainant as his wife with all respect and dignity.”

Learned counsel for the State submits that the cognizance has been taken under Sections 406 and 498A of IPC against the petitioner and the accusation of torture has been levelled after 32 years of marriage.



Considering the submission of learned counsel for the petitioner that since the complainant chose not to appear in spite of valid service of notice and the present stand of the petitioner to keep her with dignity and honour and second marriage is permissible under the Mohammedan Law, let the petitioner above named be released on anticipatory bail in the event of his arrest or surrender before the learned Court below within a period of twelve weeks from today on his furnishing bonds of Rs 10,000/- (Rupees Ten Thousand) with two sureties of the like amount each to the satisfaction of learned Additional Chief Judicial Magistrate, Gopalganj in Complaint Case No 2564 of 2013 (Trial No 862 of 2016) subject to all conditions as laid down in Section 438 (2) of Criminal Procedure Code.

The grant of anticipatory bail to the petitioner, in no way, will preclude the complainant to resume the conjugal life. If she files any such application before the learned Court below, the learned Court below will issue notice to the petitioner who will comply the view of this Court of keeping the complainant with him.

(Dinesh Kumar Singh, J)

M.E.H./-

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