

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.24361 of 2018

Arising Out of PS.Case No. -1616 Year- 2014 Thana -SAHARSA COMPLAINT CASE District-
SAHARSA

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Pankaj Kumar, Son of Chandeshwari Bhagat, Resident of Village- Siutaha
Dih, Police Station- Salkhua, District- Saharsa.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Jyoti Kumari @ Guriya, W/o Pankaj Kumar, Resident of Village-
Siutaha Dih, Police Station- Salkhua, District- Saharsa.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Jitendra Kumar

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

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

ORAL ORDER

03/ 25-07-2018

The petitioner has renewed the prayer for anticipatory bail in a complaint case, wherein process has been directed to be issued after cognizance being taken for the offence punishable under Section 498A of the Indian Penal Code.

The basic accusation is of torture.

The petitioner earlier preferred Cr. Misc. No. 14016 of 2016 with a prayer for anticipatory bail with specific statement in paragraph 13 of the main petition that the petitioner is ready to keep the complainant and two children with him at his work place with honour and dignity. Moreover, the petitioner is making payment of maintenance amount of Rs.12,000/- per month



to the complainant in pursuance to the order passed in Misc. Case No. 17/15. The said application was disposed of in view of the fact that only summons were issued in view of the ratio laid down in the case of **Salim Ansare @ Md. Salim Ansare and others Vs. The State of Bihar and Another** reported in **2015(3) PLJR, 806 (Cr. Misc. No. 51075 of 2014)**. Thereafter, the petitioner preferred Cr. Misc. No. 48499 of 2016 and confined his prayer only to the extent of extending the period of surrender since the petitioner, being in Armed Forces posted at Indo-China boarder, consequently vide order dated 16.11.2016 passed in Cr. Misc. No. 48499 of 2016, this Court extended the period of surrender by further ten weeks and directed the learned Court below to dispose of the application of the petitioner preferably on the same day.

It is submitted by learned Senior counsel for the petitioner that consequently a surrender petition was filed and the learned Court below directed to serve a copy of the petition to the other side, but the other side created ruckus in the Court, hence, the petitioner could not surrender. However, the petitioner is now ready to surrender and learned counsel was not aware about the final order dated 29.11.2017 passed in maintenance proceeding being Misc. Case No. 17/15 by Principal Judge, Family Court, Saharsa, though, a photocopy of said order has been produced by



learned counsel for opposite party no. 2 which suggests that the petitioner has been directed to make payment of Rs.8,000/- per month as maintenance amount to the complainant and also Rs.4,000/- per month to each of her two minor children, i.e., total amounting to Rs.16,000/- by 10th day of each month in the bank account of the complainant from the date of filing of Misc. case. Though, the said order does not depict the date of filing of the Misc. case but it has been submitted by learned counsel for the opposite party no. 2 that maintenance application was filed on 09.02.2015.

It is submitted by learned Senior counsel for the petitioner that the petitioner undertakes to make payment of entire maintenance amount by depositing the same in the bank account of the complainant-opposite party no. 2 within a period of six weeks in view of order dated 29.11.2017 passed in Misc. Case No. 17/15 by learned Principal Judge, Family Court, Saharsa and it is further stated that the petitioner is still ready to keep the complainant along with children with full dignity and honour.

It is submitted by learned counsel for the complainant and the complainant has confirmed information that the petitioner has performed second marriage.

In the circumstances, this Court is not



inclined to revise the earlier order.

However, since both sides are ready to get the issue mediated, in the circumstances, learned Court below will consider to grant provisional bail to the petitioner, if he surrenders before the learned Court below within a period of eight weeks in connection with Complaint Case No. 1616 of 2014, pending in the Court of learned Judicial Magistrate, Ist Class, Saharsa on payment of entire maintenance amount and will make effort to get the issue mediated in terms of ratio laid down in the case of **K. Srinivas Rao Vs. D.A. Deepa** reported in **2013(5) SCC, 226**.

Paragraph 46 reads as follows:-

“46. We, therefore, issue directions, which the courts dealing with the matrimonial matters shall follow.

46.1. In terms of Section 9 of the Family Courts Act, the Family Courts shall make all efforts to settle the matrimonial disputes through mediation. Even if the counsellors submit a failure report, the Family Courts shall, with the consent of the parties, refer the matter to the mediation centre. In such a case, however, the Family Courts shall set a reasonable time-limit for mediation centres to complete the process of mediation because



otherwise the resolution of the disputes by the Family Court may get delayed. In a given case, if there is good chance of settlement, the Family Court in its discretion, can always extend the time-limit.

46.2. The criminal courts dealing with the complaint under Section 498-A IPC should, at any stage and particularly, before they take up the complaint for hearing, refer the parties to mediation centre if they feel that there exist elements of settlement and both the parties are willing. However, they should take care to see that in this exercise, rigour, purport and efficacy of Section 498-A IPC is not diluted. Needless to say that the discretion to grant or not to grant bail is not in any way curtailed by this direction. It will be for the court concerned to work out the modalities taking into consideration the facts of each case.

46.3 All mediation centres shall set up pre-litigation desks/clinics; give them wide publicity and make efforts to settle matrimonial disputes at pre-litigation stage.”



The provisional bail of the petitioner will be confirmed by the learned Court below on being satisfied the bonafide of the petitioner in participation in mediation.

Accordingly, this application is disposed of.

(Dinesh Kumar Singh, J)

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