

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.50859 of 2018

Arising Out of PS. Case No.-283 Year-2016 Thana- SHASTRINAGAR District- Patna

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Avinash Jha S/o Dhananjay Jha, R/o C/o Carina Spjuth, Karlavagen 29, 81136 Sandviken at present 6-72 Pebble Bay, R.M.V. 2nd Stage, Nagashetty Halli, Bangalore-500094.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Tanushree Sandilya Jha, D/o Amar Nath Mishra, At present 203, Dhaneshwar Heritage, Priyadarshi Nagar, P.S.- Rupaspur, Patna.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Ramakant Sharma, Sr. Advocate
		Mr. Lakshmi Kant Sharma, Advocate
For the Opposite Party/s	:	Mr. Smt. Renuka Ratnakar

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

- 3 18-09-2018 Heard learned Senior Counsel for the petitioner, learned counsel representing the Opposite Party No. 2 and learned counsel for the State.

This application has been preferred seeking setting aside of the order dated 20.07.2018 passed by learned Sub-Divisional Judicial Magistrate, Patna in connection with Shastri Nagar P.S. Case No. 283 of 2016 registered under Section 498A of the Indian Penal Code and Sections 3 /4 of Dowry Prohibition Act.

By the impugned order it appears that the learned S.D.J.M. Patna has rejected the prayer of the petitioner to allow him to go to Sweden temporarily in connection with his



employment.

Learned Senior Counsel representing the petitioner submits that the petitioner has been granted privilege of anticipatory bail by this Court subject to the conditions mentioned therein. It is submitted that the petitioner is a law abiding citizen, he is complying with the order of the Court and has appeared in the court below on different occasions. It is pointed out that in connection with his service, he is required to visit Sweden. It is also stated that during pendency of the case in question the petitioner has become a citizen of Sweden. On earlier occasion the opposite party no. 2 had filed an application for cancellation of bail of the petitioner on several grounds but this Court had been pleased to dismiss the petition filed by opposite party no. 2.

An affidavit has been filed in this case giving descriptions of the properties which are being held either by the petitioner or by his father in the State of Bihar. The details of the properties are not required to be mentioned and suffice it to say that the petitioner has shown that he has got substantial stake in the form of residential flats at Patna as well as agricultural land in his village Govindpur, P.S.- Partapganj, District- Supual. His father is also present in Court and is ready to provide the



immovable properties standing in his name as security for purpose of permission to the petitioner to go Sweden in connection with his service. He has instructed learned Senior Counsel to say that a Bank Guarantee as per order of this Court may also be furnished.

Learned Senior Counsel representing the petitioner has further submitted that the petitioner would undertake to make himself present as and when required in connection with the case which is going on in the court of learned S.D.J.M., Patna.

On the other hand learned counsel representing the opposite party no. 2 has opposed the prayer of the petitioner submitting that the petitioner is not putting his appearance in the matrimonial case and the guardianship case which are pending in the court at Patna. This has, however, been controverted by learned Senior Counsel for the petitioner. It is further submitted that the petitioner is now citizen of Sweden and it is apprehension of opposite party no. 2 that he may avoid attending the criminal proceeding pending at Patna when he is allowed to go abroad.

Having heard learned Senior Counsel for the petitioner and learned counsel representing the opposite party



no. 2 as also the State, this Court is of the considered opinion that in the given facts and circumstances of the case where it is an admitted position that the petitioner is serving in connection with a company having its establishment at Sweden and is required by his employer to visit Sweden, he should be allowed to go there and serve his employer in order to save source of his livelihood. The facts of the case which have been taken note of by a learned co-ordinate Bench of this Court in Cr. Misc. No. 14862 of 2018 demonstrate that both the petitioner as well as opposite party no. 2 are well educated in their life. The opposite party no. 2 was also serving in Japan before her marriage. The facts also reveal that the parties had filed a joint petition before the Swedish Court for dissolution of marriage, the petition was in English on which the opposite party no. 2 put his full signature in English and for this reason the learned co-ordinate Bench disbelieved the submission of opposite party no. 2 that her signature was obtained on papers fraudulently by this petitioner, the learned co-ordinate Bench refused to accept such submission. It is also found from the submissions made at the Bar that the parties have got two daughters and presently one of the daughters is living with this petitioner whereas the another one is living with opposite party no.2.



Be that as it may, it is apparent that the level of enmity between the parties have gone up after they developed matrimonial discord. They are litigating on various aspects of the matter. This Court is not required to go into those aspects in the present case. There is no material to show that the petitioner has avoided his presence in the court below earlier.

In the circumstances stated hereinabove, this Court would set aside the impugned order and grant liberty to the petitioner to join his employer at Sweden in connection with his employment, subject to the conditions as under:

(i) He and his father both will deposit the Title Deed of the Flat being No. 203 in Veena Shree Apartment, Punaichak and the residential piece of land measuring an area of 2045 Sq. feet which has been registered in the name of the petitioner with the court below forthwith. The title deeds shall be kept safely in custody of the court below.

(ii) The petitioner shall furnish an undertaking that he will attend the court in the criminal proceeding on the date of framing of charge and on the date when the case will be fixed for statement under Section 313 Cr.P.C. as also at the time of delivery of judgment. In case he failed to abide by the undertakings and commits two regular failures in appearing



before the court below, the properties of which the Title Deeds will be deposited with the court below as security shall be attached and be proceeded with in accordance with law. Let it be recorded that these properties are unencumbered and no loan is there on these properties and petitioner and his father who is present in person shall not deal with these properties creating any third party interest.

(iii) The petitioner shall also furnish bank guarantee of Rs. 5 lakhs which will be liable to be confiscated in case the petitioner failed to abide by the conditions mentioned hereinabove.

The court below shall fix the date in the case as and when personal appearance of the petitioner will be required giving at least 21 days time to the petitioner to arrange his visit in connection with the case. The petitioner shall cooperate in the trial and disposal of the matter.

This application stands disposed off.

(Rajeev Ranjan Prasad, J)

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