

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 78413 of 2019

Arising Out of Case No.-1829-C Year-2017 Thana- West Champaran Complaint District-
West Champaran

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Md. Ekram @ Md. Ekram Alam, aged about 27 years, Male, S/o Sk. Kalam@ Abdul Kalam, R/o Village-Shiv Tola, Auraia, P.S.- Bettiah Mufassil, District- West Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Najara Khatoon, aged about 23 years, Female, D/o Sk. Jamir, R/o Village-Shiv Tola, Awaraiia, P.S.-Bettiah Mufassil, District- West Champaran.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Sanjeev Kumar, Advocate
For the State	:	Mr. Sanjay Kumar Sharma, APP
For the OP No. 2	:	Mr. Asif Kalam, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 27-08-2020

The matter has been heard *via* video conferencing due to circumstances prevailing on account of the COVID-19 pandemic.

2. Heard Mr. Sanjeev Kumar, learned counsel for the petitioner and Mr. Sanjay Kumar Sharma, learned Additional Public Prosecutor (hereinafter referred to as the 'APP') for the State. Mr. Asif Kalam, learned counsel submitted that the advocate-on-record, Mr. Arif Daula Siddique, has requested him to assist.

3. The petitioner apprehends arrest in connection with Complaint Case No. 1829-C of 2017 dated 09.10.2017,



instituted under Sections 498A/323 of the Indian Penal Code and 3/4 of the Dowry Prohibition Act.

4. The allegation in the complaint filed by the opposite party no. 2 against the petitioner is that marriage was solemnized between the two and after that there is allegation under Section 498A of the Indian Penal Code.

5. Learned counsel for the petitioner submitted that there was no marriage held between the parties which would be clear from the fact that on a petition filed by the father of the petitioner before the Superintendent of Police, West Champaran, an enquiry was conducted and the report submitted by the Assistant Sub-Inspector of Police dated 23.10.2019, which reveals that the opposite party no. 2 was married to Sheikh Irshad from whom there is also a girl child born. Learned counsel submitted that even the birth certificate of the girl discloses the name of the opposite party no. 2 as the mother and Sheikh Irshad as the father. It was submitted that the father of the opposite party no. 2 has affirmed an affidavit stating that his wife i.e., the mother of the opposite party no. 2, had got a false case instituted against the petitioner in view of some land being transferred in his name and further, that as far as the allegation that in the year 2016 the marriage took place, his



daughter, at that time, was aged only 14-15 years and, thus, there could not have been any marriage solemnized and it is further stated that the petitioner happens to be the nephew of the father of the opposite party no. 2. Learned counsel submitted that in the affidavit it has also been stated that in the year 2018 the opposite party no. 2 was married to Sheikh Irshad. Learned counsel submitted that from the aforesaid, it is clear that the entire case is based on falsity, having been filed with ulterior motive and clearly an abuse of the process of the Court. Learned counsel further submitted that the even the Sarpanch of Gram Kutchery, Bhediharwa in the district of West Champaran has given a certificate dated 10.05.2019 with regard to the opposite party no. 2 being married to Irshad Alam. It was submitted that had it been the fact that the petitioner was married to the opposite party no. 2, she could not have married Shiekh Irshad without first getting her divorce from the petitioner and such divorce not being pleaded or alleged, the obvious conclusion would be that the opposite party no. 2 was never married and was married for the first time with Sheikh Irshad.

6. Learned APP submitted that the allegation of marriage of the petitioner with opposite party no. 2 appears to be doubtful in view of the report of the police.



7. Learned counsel for the opposite party no. 2 submitted that the father and mother of the opposite party no. 2 are not on good terms and that is why the father of the opposite party no. 2 has affirmed the affidavit in favour of the petitioner. However, on a query of the Court with regard to materials indicating marriage of the petitioner with Sheikh Irshad, from whom a daughter has also been born, in support of which there is a birth certificate and also the certificate of the Sarpanch as well as the Police, learned counsel submitted that he does not have any instructions on the same.

8. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, in the tentative view of the Court, there is cogent indication in support of the contentions of learned counsel for the petitioner. Thus, the Court is inclined to allow the prayer for anticipatory bail.

9. Accordingly, in the event of arrest or surrender before the Court below within six weeks from today, the petitioner be released on bail upon furnishing bail bonds of Rs. 25,000/- (twenty five thousand) with two sureties of the like amount each to the satisfaction of the learned S.D.J.M., Bettiah, West Champaran in Complaint Case No. 1829-C of 2017,



subject to the conditions laid down in Section 438(2) of the Code of Criminal Procedure, 1973 with further condition that one of the bailors shall be a close relative of the petitioner.

10. The application stands disposed off in the aforementioned terms.

(Ahsanuddin Amanullah, J)

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