

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.8258 of 2022

Arising Out of PS. Case No.-149 Year-2019 Thana- MAHILA P.S. District- Bhojpur

Upast Milind @ Mittal Sharma Son Of Mahendra Kumar Sharma R/O
Village- Shastri Nagar West, No. 08, P.S.- Rampur, District- Gaya (Bihar)
... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr.Mukesh Kumar, Advocate
	:	Mr.Anshudhar Sharma, Advocate
For the Opposite Party/s	:	Mr.Upendra Kumar, Advocate
For the Informant	:	Mr.Shiv Prasad Gupta, Advocate

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

7 29-11-2022 Heard learned counsel appearing on behalf of the
petitioner, learned APP appearing on behalf of the State and
learned counsel appearing on behalf of the informant.

Let the defect(s), if any, be removed within a period
of four weeks from today.

The petitioner seeks bail in connection with Mahila
P.S. Case No. 149 of 2019 registered for the offence under
Sections 498(A), 379 and 406 of the Indian Penal Code and ³/₄
Dowry Prohibition Act.

The accused/petitioner is named in the F.I.R. and is in
custody since 30.08.2021.

The allegation against the petitioner is to commit
cruelty and also to solemnize his marriage with the informant
during subsistence of his first marriage.



Learned counsel appearing on behalf of the petitioner submitted that marriage has been negotiated between the parties and for that a payment of Rs. 10,000,00/- (Rs. Ten Lakh) was made in cash to the informant for which a valid receiving was obtained in presence of witnesses on stamp paper of Rs. 1000/- through the instrument which has been created on 01.08.2019 (Annexure-2). It is submitted that if informant raised any dispute regarding non-payment of amount as mentioned in instrument dated 01.08.2019 having all right to raise such issue before the competent Court for the recovery of said amount. It is also submitted that source of Rs.10 Lakh is well explained and instrument vide Annexure-2, create a balance in favour of petitioner, where informant is under onus to prove, as regard to non-receiving of Rs.10 Lakh. Learned counsel further submitted that this marriage, admittedly, *void ab initio* and, as such, Section 498A of the Indian Penal Code is not applicable, where maximum allegation appears regarding Section 494 of the Indian Penal Code, which is bailable offence. While concluding the argument, it is submitted that petitioner is in custody for more than one year and, moreover, investigation of this case is complete, for which, charge-sheet has been submitted, as such, there is no chance of tampering with the evidence.



Learned APP duly assisted by learned counsel for the informant, while opposing the prayer of bail submitted that instrument dated 01.08.2019, through which payment was alleged to be made to the informant is false and fabricated, as signature of the informant, along with other witnesses, from both sides were obtained on blank paper, where settled amount of Rs. 10,000,00/- (Rupees Ten Lakh) was never paid to the informant.

In view of the facts and circumstances, and by taking note of accusation, where petitioner is in custody since 30.08.2021 coupled with the fact that charge-sheet has already been submitted, let the petitioner, above named, is directed to be released on bail in connection with Mahila P.S. Case No. 149 of 2019 on furnishing bail bond of Rs.10,000/- (Rupees Ten Thousand) with two sureties of the like amount each to the satisfaction of learned Sub-Divisional Judicial Magistrate, Bhojpur at Arrah/concerned Court, subject to the conditions as laid down under Section 437(3) of the Cr.P.C.

(Chandra Shekhar Jha, J)

R.S.Sen/-

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