

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.46593 of 2021

Arising Out of PS. Case No.-308 Year-2020 Thana- DIGHA District- Patna

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Pappu Singh aged about 30 years, male, Son of Shailendra Singh, Resident of Jaiprakash Nagar, Digha Ashiyana Road, Near Don Basco School, P.S.- Digha, District - Patna.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Shikha Prakash Wife of Pappu Singh Daughter of Sanjay Kumar, Resident of Mohalla - Saketpuri, Bahadurpur Near Bazar Samiti, P.S.- Bahadurpur, District - Patna

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Rajesh Ranjan, Advocate
For the O.P. No. 2	:	Mr. Apurv Harsh, Advocate
For the State	:	Mr. Choubey Jawahar, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 14-10-2025

Heard Mr. Rajesh Ranjan, learned counsel appearing on behalf of the petitioner; Mr. Apurv Harsh, learned counsel appearing on behalf of the opposite party no. 2 and Mr. Choubey Jawahar, learned A.P.P. for the State.

2. The present present quashing application was filed in the year 2021 under Section 482 of the Cr.P.C. seeking following reliefs:

"That, this is an application for quashing of the condition no. 1 of bail order dated 16.06.2021 passed by



learned 12th Additional Sessions Judge, Patna in Anticipatory Bail Application No. 3643 of 2020 arising out of Digha P.S. Case No. 308 of 2020 instituted for the offences punishable under Sections 341, 498(A), 504, 506, 34 of the Indian Penal Code and Sections 3/4 of the Dowry Prohibition Act whereby the learned court below has allowed the anticipatory bail of the petitioner and directed him to pay a sum of Rs. 15,000/- per month to O.P. no. 2."

3. An urgent mentioning was made on behalf of the opposite party no. 2 on 13.10.2025 that she is faced with violence having been caused by the petitioner and in spite of specific order dated 19.09.2020, by which, the learned District Court had directed the petitioner to pay a sum of Rs. 15,000/- per month to the opposite party no. 2, not even a penny has been given to opposite party no. 2. By lapse of time, she has given birth to a male child. However, the petitioner has admitted the child in one of the premium institutions, but, recently, for the past two months, the petitioner has subjected her (opposite party no. 2) and his only son to various sorts of cruelty and torture, at the same time, the petitioner has stopped making payment of school fee of the child.

4. Learned counsel appearing on behalf of the petitioner informs that the allegations are false which is similar in nature to those contained in the FIR dated 12.06.2020. The parties have already settled their dispute amicably and opposite party no. 2 has not denied that she is not residing with the



petitioner. He informs that due to some financial constraint, the petitioner could not make payment of school fee of his child and before it could be paid, the present application has been posted for urgent hearing on the said ground. Learned counsel further submitted that once the petitioner is taking care of his wife along with his child, who are residing along with him, there is no question of the petitioner having tortured and subjecting the opposite party no. 2 to cruelty. Learned counsel further submitted that petitioner undertakes that in future, he will ensure to make payment of school fee on time. As on date, he is also taking care of the opposite party no. 2 with full honour and dignity.

5. Heard the parties.

6. This Court finds that the situation, which is faced between the husband and wife as would appear from the rival submissions made on behalf of the parties and allegation made in the FIR, as well as, from the pleadings made in the present application, the couple, who have already compromised and are living together, their personal ego may have dominated their prudent decision leading to allegation made before this Court orally. The conduct of the petitioner cannot be said to be very convincing to the extent that it is admitted position that the



school fee of the child has not been paid till date, which according to the petitioner, is due only for one month.

7. The parties, who are adult, if they want to live their own life separately, then they can avail appropriate remedy before appropriate forum. The Apex Court in the case of ***B.S. Joshi v. State of Haryana***, reported in, ***(2003) 4 SCC 675*** held that instead of encouraging matrimonial dispute, the parties may ponder over their default and resolve their dispute. I find it gainful to reproduce paragraphs no. 12 and 13 of the said judgment, which *inter alia* are as follows:

“ 12. The special features in such matrimonial matters are evident. It becomes the duty of the court to encourage genuine settlements of matrimonial disputes.

13. The observations made by this Court, though in a slightly different context, in ***G.V. Rao v. L.H.V. Prasad [(2000) 3 SCC 693 : 2000 SCC (Cri) 733]*** are very apt for determining the approach required to be kept in view in a matrimonial dispute by the courts. It was said that there has been an outburst of matrimonial disputes in recent times. Marriage is a sacred ceremony, the main purpose of which is to enable the young couple to settle down in life and live peacefully. But little matrimonial skirmishes suddenly erupt which often assume serious proportions resulting in commission of heinous crimes in which elders of the family are also involved with the result that those who could have counselled and brought about rapprochement are rendered helpless on their being arrayed as accused in the criminal case. There are many other reasons which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults



and terminate their disputes amicably by mutual agreement instead of fighting it out in a court of law where it takes years and years to conclude and in that process the parties lose their “young” days in chasing their “cases” in different courts.

8. In absence of any information regarding allegation against the petitioner of having subjected the opposite party no. 2 to cruelty and, at the same time, considering that petitioner and opposite party no. 2, who are husband and wife and are adult and are living together with child, they can bethe best judge about their own interest and the interest of their child. In such situation, this Court finds that keeping the criminal prosecution pending against the petitioner can lead tectonic drift in marriage leading to separation, at the same time, the interest of child becomes paramount. I am of the view that the best interest of the child is to have the parental care of both the parents. In the present case, the husband and wife having strained matrimonial relationship and the innocent child has to bear the burnt of parental disharmony affecting the overall development of the child. It seems to be not possible to provide complete peaceful environment to the child.

9. In peculiar facts of the case and considering the background circumstances of the welfare of the child on the touchstone of principle of *parens patriae* jurisdiction as the



minor is within the jurisdiction of the Court, the Apex Court found it in the case of ***Howarth v. Northcott, 152 Conn 460*** that the welfare of the child is of paramount consideration of the Court. I find it apt to reproduce the observations made by the Apex Court in the aforesaid case, which is as under:

"In habeas corpus proceedings to determine child custody, the jurisdiction exercise by the Court rests in such cases on its inherent equitable powers and exerts the force of the State, as parens patrie, for the protection of its infant ward, and the very nature and scope of the inquiry and the result sought to be accomplished call for the exercise of the jurisdiction of a court of equity." (emphasis supplied)

It was further observed;

"The employment of the forms of habeas corpus in a child custody case is not for the purpose of testing the legality of a confinement or restraint as contemplated by the ancient common law writ, or by statute, but the primary purpose is to furnish a means by which the court, in the exercise of its judicial discretion, may determine what is best for the welfare of the child, and the decision is reached by a consideration of the equities involved in the welfare of the child, against which the legal rights of no one, including the parents, are allowed to militate. It was also indicated that ordinarily, the basis for issuance of a writ of habeas corpus is an illegal detention; but in the case of such a writ sued out for the detention of a child, the law is concerned not so much with the illegality of the detention as with the welfare of the child."

10. In this regard, it would be also gainful to reproduce the observation made by the Apex Court in ***Mausami Moita Ganguli V. Jayant Ganguli*** reported in ***(2008)7 SCC 673*** in paragraph nos. 19 to 21 and 23 to 26:

"19. The principle of law in relation to the custody of a minor child are well settled. It is trite that while determining the question as to which parent the care and control of a child should be committed, the first and the paramount consideration is the welfare and interest of the



child and not the rights of the parents under a statute. Indubitably, the provisions of the law pertaining to the custody of a child contained in either the Guardians and Wards Act, 1890(Section 17) or the Hindu Minority and Guardianship Act, 1956 (Section 13) also hold out the welfare of the child as a predominant consideration. In fact, no statute, on the subject, can ignore, eschew or obliterate the vital factor of the welfare of the minor.”

“20. The question of welfare of the minor child has again to be considered in the background of the relevant facts and circumstances. Each case has to be decided on its own facts and other decided cases can hardly serve as binding precedents in so far as the factual aspects of the case are concerned. It is, no doubt, true that father is presumed by the statutes to be better suited to look after the welfare of the child, being normally the working member and head of the family, yet in each case the court has to see primarily to the welfare of the child in determining the question of his or her custody. Better financial resources of either of the parents or their love for the child may be one relevant considerations but cannot be the sole determining factor for the custody of the child. It is here that a heavy duty is cast on the court to exercise its judicial discretion judiciously in the background of all the relevant facts and circumstance, bearing in mind the welfare of the child as the paramount consideration.”

21. In Rosy Jacob v. Jacob A. Chakramakkal reported in (1973) 1 SCC 840, a three-Judge Bench of the Apex Court in a rather curt language had observed that the controlling factor governing the custody of the child would be its welfare and not the rights of the parent:

“15. ... The children are not mere chattels: nor are they mere playthings for their parents. Absolute right of the parents over the destinies and the lives of their children has, in the modern changed social conditions, yielded to the considerations of their welfare as human being so that they may grow up in a normal balanced manner to be useful members of the society and the guardian court in case of a dispute between the mother and the father, is expected to strike a just and proper balance between the requirements of welfare of the minor children and the rights of their respective parents over them.”

“23. Having bestowed our anxious consideration to the material on record and the observation made by the courts below, we are of the view that in the present case there is no ground to upset the judgment and order of the High Court. There is nothing on record to suggest that the welfare of the child is in any way in peril in the hands of the father. In our opinion, the stability and security of the child is also essential ingredient for a full development of child's talent and personality. As noted above, the appellant is a teacher, now employed in a school



at Panipat, where she had shifted from Chandigarh some time back. Earlier, she was teaching in some school at Calcutta.

Admittedly, she is living alone. Except for a very short duration when he was with the appellant, Master Satyajeet has been living and studying in Allahabad in a good school and is stated to have his small group of friends there. At Panipat, it would be an entirely new environment for him as compared to Allahabad."

"25. It is also significant to note that during the course of hearing on one of the dates, when we had not yet interviewed Satyajeet, we had suggested that it would be better if the child could stay with his mother for some more time. However, upon hearing us, he started crying and whining and, showed reluctance to go with the mother."

Watching his reaction, we dropped the proposal.

"26. Under these circumstances and bearing in mind the paramount consideration of the welfare of the child, we are convinced that the child's interest and welfare will be best served if he continues to be in the custody of the father; In our opinion, for the present, it is not desirable to disturb the custody of master Satyajeet and, therefore, the order of the High Court giving his exclusive custody to the father with visitation rights to the mother deserves to be maintained. We feel that the visitation rights to the appellant by the High Court, as noted above, also do not require any modification."

We, therefore, affirm the order and the afore-extracted direction given by the High Court. It will, however, be open to the parties to move this Court for modification of this order or for seeking any direction regarding the custody and well-being of the child, if there is any change in the circumstances."

11. In the case of **Gaurav Nagpal v. Sumedha Nagpal**

reported in **(2009) 1 SCC 42**, the Apex Court in paragraph 50

has held as follows:-

"50. When the Court is confronted with conflicting demands made by the parents, each time it has to justify the demands. The Court has not only to look at the issue on legalistic basis, in such matters human angles are relevant for deciding those issues. The Court then does not give emphasis on what the parties say, it has to exercise a jurisdiction which is aimed at the welfare of the minor."



12. Being aware of the role of the Court becomes *parens patriae*, I direct the learned District Court to see that till the child becomes adult, the petitioner being *Hindu*, becomes the natural guardian of the child, which fasten him with legal responsibility, he must ensure to take care of his child and make payment of Rs. 15,000/- per month to the opposite party no. 2 for proper care of his child on account of education, as well as, nutrition.

13. Accordingly, the present application stands disposed of.

(Purnendu Singh, J)

Niraj/-

AFR/NAFR	A.F.R.
CAV DATE	N/A
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