

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.6141 of 2026

Arising Out of PS. Case No.-1806 Year-2023 Thana- SIWAN COMPLAINT CASE District-
Siwan

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Ali Imam S/o Wazir Miyan Resident of Village- Jigna Jagarnath, P.S.-
Mirganj, Distt.- Gopalganj

... .. Petitioner/s

Versus

1. The State of Bihar
2. Ruksan Khatoon D/o Ali Ahamd Resident of Village- Barai Tola, Bindusar,
P.S.- Siwan mufasil, Distt.- Siwan

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr.Ajay Kumar Pandey, Advocate
For the Opposite Party/s	:	Mr.Sanjay Kumar Tiwary, APP
For O.P. No.2	:	Mr. Arghesh Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

3 15-04-2026 Heard Mr. Ajay Kumar Pandey, learned counsel
appearing on behalf of the petitioner; Mr. Sanjay Kumar
Tiwary, learned APP for the State and Mr. Arghesh Kumar,
learned counsel for the O.P. No.2.

2. The petitioner seeks pre-arrest bail in connection
with Complaint Case No. 1806/2023 registered for the
offence(s) punishable under Sections
498(A)/406/307/504/506/323/341/147/149/34 of the Indian
Penal Code.

3. The allegation is of subjecting the complainant –
opposite party no.2/complainant to various sorts of torture due
to non-fulfillment of the demand of the dowry and ultimately



she was driven out of her matrimonial house.

4. At the outset, learned counsels appearing on behalf of the respective parties submitted that though the mediation between the parties has failed, still a chance be given to them to again settle their strain relationship amicably, considering the interest of the only child.

5. Learned APP appearing on behalf of the State submitted that a chance be given to the parties for amicable settlement outside the court.

6. The parties have agreed to appear before the learned District Court at 10:30 A.M. on or before 04.05.2026 for resolving the dispute by way of mediation.

7. Heard the parties.

8. This Court finds that the matrimonial dispute is not an offense against the society rather a matrimonial dispute is a private conflict between spouses and does not inherently constitute an offence against society, as has been held by the Apex Court in the case of ***Rajendra Bhagat v. State of Jharkhand***, reported in ***(2022) 18 SCC 465*** in paragraph no.9 which is as under:-

“9. Taking note of the object of Section 498-AIPC, the expected approach of the High Court in the event of bona fide settlement of disputes had been duly exposed by this Court in B.S. Joshi v. State



of Haryana [B.S. Joshi v. State of Haryana, (2003) 4 SCC 675 : 2003 SCC (Cri) 848] , wherein this Court has underscored the duty of the Court to encourage the genuine settlement of matrimonial disputes and said as under : (SCC pp. 682-83, paras 12-16)

“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 [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.

14. There is no doubt that the object of introducing Chapter XX-A containing Section 498-A in the Penal Code, 1860 was to prevent torture to a woman by her husband or by relatives of her husband. Section 498-A was added with a view to punishing a husband and his relatives who harass or torture the wife to coerce her or her relatives to satisfy unlawful demands of dowry. The hypertechnical view would be counterproductive and would act against interests of women and against the object for which this provision was added. There is every likelihood that non-exercise of inherent power to quash the proceedings to meet the ends of justice would prevent women from settling earlier. That is not the object of Chapter XX-A of the



Penal Code, 1860.

15. In view of the above discussion, we hold that the High Court in exercise of its inherent powers can quash criminal proceedings or FIR or complaint and Section 320 of the Code does not limit or affect the powers under Section 482 of the Code.

16. For the foregoing reasons, we set aside the impugned judgment and allow the appeal and quash the FIR abovementioned.””

9. The parties have willingly desired to appear before the learned District Court on or before 04.05.2026, so that the matter can be referred to the District Mediation Centre.

10. Learned District Court is directed to take necessary steps to refer the matter for mediation under the provision of Mediation Act, 2023 before the learned Mediator of the District Mediation Center by fixing a date for appearance of the parties to give effect to “Mediation for the Nation 2.0”.

11. Learned Mediator of the District Mediation Center concerned, upon appearance of the parties, shall make his/her best efforts to settle the dispute amicably and thereafter submit his/her report before the concerned learned District Court, well within a period of three months, till then, no coercive action shall be taken against the petitioner in connection with the aforesaid case.

12. In case, the parties resolve their dispute amicably or arrive at a mutual settlement, in light of the law laid down by the Apex Court as referred hereinabove, the petitioner is



required to be released on pre-arrest bail on such terms and conditions as the learned District Court deems it fit and proper.

13. In case of failure on the part of the petitioner to appear on or before 04.05.2026 before the learned District Court or any date fixed by the learned Mediator, the interim protection granted to the petitioner shall automatically lose its force.

14. In case, it is deliberate on the part of the O.P. No.2 to reconcile, then in that case, the interim protection granted to the petitioner shall continue and the trial shall proceed in accordance with law.

15. In case, the parties fail to reconcile, then in that case, parties may avail appropriate remedy. Then also, petitioner is directed to be released on pre-arrest bail on such terms and conditions as the learned District Court deems it fit and proper.

16. If both the parties arrive at amicable settlement, then they must withdraw the criminal cases, if any, which they have lodged against each other.

17. The learned District Court must not abdicate its responsibility to act as *parens patriae* in safeguarding the paramount interests of the child, and should determine and fix an appropriate amount to be paid by the petitioner for the child's welfare.



18. In this regard the Apex Court dealing with such situation on the touchstone of principle of *parens patriae* in the case of **Howarth v. Northcott, 152 Conn 460** has observed that the welfare of the child is of paramount consideration. 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."

19. 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."

20. 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."



21. With aforesaid direction and observation, the present application stands disposed of.

22. Let a copy of this order be communicated to the Member Secretary, Bihar State Legal Services Authority and the Patna High Court Mediation Centre for the purpose of record.

(Purnendu Singh, J)

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