

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.45103 of 2025

Arising Out of PS. Case No.-81 Year-2024 Thana- MAHILA PS District- Aurangabad

Prem Gupta @ Prem Kumar @ Bablu aged about 41 years (Male) son of Bajrangi Prasad, resident of Village+P.O.+P.S.- Nawadih Bazar District- Palamu (Jharkhand)

... .. Petitioner/s

Versus

1. The State of Bihar
2. Nilam Devi D/o- Late Uday prasad , R/o-Vill-Kateya ,P.O.-Jai Govind Nagar Makhra, P.S.-Jamhor , Dist-Aurangabad.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Kamendra Prasad Singh, Advocate
For the O.P. No. 2	:	Mr. Rajnish Ranjan, Advocate
For the State	:	Dr. Ajeet Kumar, A.P.P.

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

4 21-01-2026 Heard Mr. Kamendra Prasad Singh, learned counsel appearing on behalf of the petitioner; Mr. Rajnish Ranjan, learned counsel for the complainant and Dr. Ajeet Kumar, learned APP appearing on behalf of the State.

2. The petitioner seeks pre-arrest bail in connection with Mahila P.S. Case No. 81 of 2024 registered for the offence(s) punishable under Sections 126(2), 115(2), 85, 352, 3(5) of the BNS; Sections 3/4 of the D.P. Act and Section 3 of the Dyne Act.

3. As per the allegation made in the FIR, the marriage of the O.P. No. 2 was solemnized with the petitioner on 09.12.2009 as per Hindu Rites and Custom and they have been



blessed with a girl child out of the said wedlock, who is aged about 14 years. After few years of marriage, petitioner had started demanding rupees five lakh from the parent of the O.P. No. 2 for starting a business and due to non-fulfillment of the same, he along with his family members, used to say her Dyne and had subjected the O.P. no. 2 to various sorts of torture and ousted her from her matrimonial house along with her 14 years old girl child.

4. Learned counsel appearing on behalf of the petitioner submitted that petitioner is innocent and has falsely been implicated in the present case. He further submitted that petitioner always tries to lead a peaceful married life with the informant but she never co-operates with him on the instigation of her family members. Learned counsel further submitted that marriage is a sacred ceremony but little matrimonial skirmish suddenly erupts into hatred and the parties ponder to reconcile their dispute outside the court.

5. Learned counsel appearing on behalf of the informant opposing the prayer for grant of pre-arrest bail submitted that an opportunity may be given to the parties to resolve their dispute amicably outside the Court. He further submitted that the petitioner and O.P. No.2 have 14 years old



girl child and petitioner is not taking care of her only girl child, who requires proper nourishment and good education having attained the age of 15 years and demanded Rs. 20,000/- per month from the petitioner for proper nourishment and good education of the child.

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

7. However, at this stage, learned counsel for the respective parties, on instruction, submitted that the parties have agreed to appear before the learned District Court at 10:30 A.M. on 19.02.2026 for resolving the dispute by way of mediation.

8. Heard the parties.

9. 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. However, a false case can have a disastrous consequence in absence of any criminal content. The personal dispute cannot call for a criminal offence. In such situation, continuation of the proceeding would amount to abuse of process of law leading to vexatious proceeding against the petitioner.



10. In this regard, the Apex Court in the case of **B.S. Joshi v. State of Haryana**, reported in, **(2003) 4 SCC 675**, in paragraph nos. 12 and 13 has held as under:-

“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.”

11. The parties have willingly desired to appear before the learned District Court on 19.02.2026, so that the matter can be referred to the District Mediation Centre so as to give effect to Mediation 2.0.

12. Learned District Court is directed to take necessary steps to refer the matter before the learned Mediator of the District Mediation Center by fixing a date for appearance of the parties.

13. Learned Mediator of the District Mediation Center



concerned upon appearance of the parties on the fixed date 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 four months, till then, no coercive action shall be taken against the petitioner in connection with the aforesaid case.

14. 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, 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.

15. In case of failure on the part of the petitioner to appear on 19.02.2026 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.

16. In case, it is deliberate on the part of the opposite party 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.

17. 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.

18. As a result of the strained matrimonial relationship between husband and wife, the child should not suffer. 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."

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. Learned District Court, in such circumstances, where the interest of the child becomes paramount, is directed to decide the amount, which is required for proper growth and good education of the girl child, who has attained the age of 14 years. It is well settled principle of law that the rule of the Court becomes parens patriae. He must exercise his jurisdiction to consider for the welfare of the child which is paramount till the parties resolve their dispute in accordance with the law.

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

(Purnendu Singh, J)

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