

**IN THE HIGH COURT OF JUDICATURE AT PATNA  
CRIMINAL MISCELLANEOUS No.60431 of 2022**

Arising Out of PS. Case No.-1742 Year-2021 Thana- EAST CHAMPARAN COMPLAINT  
District- East Champaran

MD. IRSHAD KURAISHI S/o Ramjan Kuraishi R/o Mohalla- Chikpatti  
Christian Quarter, P.S.- Bettiah Town, Distt- West Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Arzoo Praween D/o Jugnu Kuraishi R/V- Nakchhed Tola, P.S.- Motihari  
Town, Distt- East Champaran.

... .. Opposite Party/s

**Appearance :**

For the Petitioner/s : Mr. Brajesh Kumar Singh, Advocate.  
For the State : Mr. Ajit Kumar, APP.  
For the Informant : Mr. Madhurendra Kumar, Advocate.

**CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH  
ORAL ORDER**

10 03-05-2024 Heard Mr. Brajesh Kumar Singh, learned counsel  
appearing on behalf of the petitioner; Mr. Ajit Kumar, learned  
APP for the State and Mr. Madhurendra Kumar, learned counsel  
for the informant.

2. The petitioner seeks pre-arrest bail in connection  
with Trial No. 2565 of 2022 arising out of Complaint Case No.  
C-1742 of 2021 registered for the offence punishable under  
Sections 323, 498A and 406/34 of the Indian Penal Code and  
Sections 3 and 4 of the Dowry Prohibition Act. The bail  
application of the petitioner was heard and he was granted pre-  
arrest bail on 15.05.2023.

3. Pursuant to the communication dated 09.12.2023  
made to the Registrar General of this Court, the present bail



application is being heard on merits in compliance of the order and direction of the Hon'ble Supreme Court to be heard on merits. The observations made by the Apex Court in Paragraph Nos. 3 to 5 of the order dated 07.12.2023 passed in Criminal Appeal No. 3758 of 2023 (Arising out of SLP (Crl.) No. 10166 of 2023), are reproduced hereinafter:

*“3. In the present proceedings, respondent No.2 wife has filed a counter affidavit making allegations against the appellant. Since the High Court has not examined the merits of the case and has passed a conditional impugned order, which cannot be sustained, we deem it proper to set aside the same and remand the matter to the High Court for consideration afresh.*

*4. In that view of the matter, without expressing any opinion on the merits of the case, we set aside the impugned order and request the High Court to decide the application filed by the appellant on merits and in accordance with law as expeditiously as possible.*

*5. The interim protection granted by this Court vide the order dated 01.09.2023 shall continue for a period of four weeks or till the High Court passes any further order, whichever is earlier.”*

4. After the matter was remanded by the Apex Court vide order dated 07.12.2023, the petitioner also filed I.A. No. 01 of 2024 on 05.01.2024. The present bail application was listed on 23.02.2024, on which date, the petitioner remained unrepresented and Mr. Madhurendra Kumar, learned counsel had tendered appearance on behalf of the opposite party no.2 and it was informed that petitioner is in habit to avoid court proceeding by adopting tactical measures. This Court vide order dated 23.02.2024 had directed the Office of this Court to contact



all the counsels who have accepted 'vakalatnama' on behalf of the petitioner. The matter was directed to be notified on 01.03.2024, on which date, Mr. Abhishek Kumar, learned counsel had tendered his appearance on behalf of the petitioner and had informed that he has already given 'No Objection' to the petitioner and he has no idea to whom the petitioner has executed a fresh vakalatnama. On 01.03.2024, the Opposite Party No.2 remained unrepresented, then the Superintendent of Police, East Champaran was directed to ensure presence of opposite party no.2 in Court on the next date of hearing and this Court had warned that the petitioner must remain present to avoid further adjournment. The matter was re-notified on 15.03.2024, on which date, Mr. Brajesh Kumar Singh, learned counsel who had accepted 'vakalatnama' in the month of January had tendered his appearance on 05.01.2024 for the first time on behalf of the petitioner. A joint request was made by the parties to adjourn the case so that both the parties can file their respective affidavits. The matter was re-notified on 10.04.2024, on which date, again a deliberate step was taken, as no one had appeared on behalf of the petitioner in spite of the Court's order and in compliance of the Apex Court's direction. The matter was listed again on 19.04.2024 and on the said date, also no one



appeared on behalf of the petitioner. Vide order dated 19.04.2024, this Court had directed the Superintendent of Police, West Champaran, Bettiah to produce the petitioner on the next date of hearing i.e. today at 10:30 A.M. Today the police has produced the petitioner in the court, represented by Mr. Brajesh Kumar Singh, learned counsel. Learned counsel has given reason for his non-appearance on earlier occasions in Court that due to heart disease, he had to take regular check up. He admits that no adjournment was sought on his behalf or he had requested any counsel to seek adjournment.

5. This Court had already passed a detailed order on 19.04.2024 and in continuation of the said order and in compliance whereof, the opposite party no.2 has also physically appeared today before this Court and it has been informed on her behalf that she was medically examined and Ultrasound report also reveals that she is medically fit and she had never conceived denying the allegation made by the petitioner that at the time of marriage she was carrying foetus of 19 weeks and 4 days and it has become difficult for the petitioner to live along with the opposite party no.2. Opposite party no.2 today in open Court has shown her desire that she still wants to live with the petitioner. The petitioner admits in open court that he has not



given 'talak' to her, but he don't want to live with the opposite party no.2. He again reiterated that opposite party no.2 was carrying foetus of '19 weeks and 4 days' at the time of marriage and it had become difficult for him to live along with the opposite party no.2.

6. While disposing of the present bail application vide order dated 15.05.2023, this Court had directed both the parties to file affidavit, who had agreed to live together and were also willing to reconcile their strained relationship.

7. As per the allegation made in the complaint petition, marriage of opposite party no.2 was solemnized with the petitioner on 31.07.2021 according to Muslim rites and customs and at the time of marriage, the parents of the complainant had spent money according to their capacity. Thereafter, the complainant went to her matrimonial home where she lived peacefully for some days. Allegation is that the petitioner had started demanding gold chain and ring and due to non-fulfillment of said demand, the accused persons including the petitioner had started torturing her and subjected her to various sorts of cruelty followed by assault. The parents of the complainant had tried to pacify the matter and thereafter, the accused persons forcibly ousted her from her matrimonial house



and kept all her belongings and valuables.

8. In the bail application, the petitioner has also alleged against the opposite party no.2 that the opposite party no.2 had stayed in his house for 15 days and no complaint was made and has submitted that he had suspicion that the complainant was pregnant prior to the marriage for which the petitioner had confirmed by getting her examined and the Ultrasound report dated 08.09.2021 shows that 19 weeks and 4 days foetus was found in the womb of the complainant at the time of marriage. Petitioner found himself to be cheated by the complainant and prior to the filing of the complaint dated 06.10.2021, the petitioner had filed a case on 17.09.2021 before the learned Chief Judicial Magistrate, Bettiah, West Champaran. The same is annexed as Annexure-3 to the bail application. Petitioner has further denied that he had misbehaved with the complainant and had subjected her to cruelty in any manner or has assaulted her.

9. No counter affidavit was required to be filed on behalf of the complainant considering the fact that while the bail application was disposed of, petitioner and the opposite party no.2 had agreed that they will resolve their matrimonial dispute amicably and will live together. The petitioner against the order



dated 15.05.2023, though was granted interim relief, had preferred to file S.L.P. No. 10166 of 2023 and vide order dated 07.12.2023, the Apex Court set aside the impugned order and directed this Court to decide the application on merits and in accordance with law as expeditiously as possible.

10. A supplementary affidavit has been filed on behalf of the petitioner on 02.04.2024 before this Court. Paragraph Nos. 2 to 5 are reproduced hereinafter:

*2. That the complainant has filed a Complaint Case No. C-1742 of 2021 alleging therein that her marriage was solemnized on 31.07.2021 according to Muslim rites and rituals with the Md. Irshad Kuraishi (petitioner). It is further alleged that her parents are poor so her maternal uncle Iliyas Kuraishi has expended Rs. 5 Lakh on the occasion of marriage.*

*3. That it is submitted that it is admitted fact that only Rs. 5 Lakh has been expended by the side of the complainant.*

*4. That it is further submitted that the petitioner is ready for one time settlement.*

*5. That it is further submitted that the petitioner is ready to pay the amount of Rs. 2,50,000/- as permanent alimony and also an amount of Rs. 21,786/- of Maihar to the Opposite Party No. 2 which was accepted by the petitioner at the time of marriage and other gifts and items will be also returned which has been given by the complainant's family.”*

11. A counter affidavit filed on behalf of the opposite party no.2 on 02.04.2024 is also on record. Paragraph Nos. 2 to 8 are reproduced hereinafter:

*“2. That the marriage of the Opposite Party No.2 solemnized with the petitioner on 31.07.2021 and just two months i.e. on 09.09.2021 the petitioner and others ousted the opposite party no.2 from her matrimonial house after taking her belongings due to non-fulfillment of their*



*demand of dowry and then on 08.10.2021 the Opp. Party No. 2 filed a Complaint Case No. C-1742 of 2021 for the offences U/Ss 323, 498 (A), 406, 34 of the I.P.C.*

*3. That the petitioner filed Cr. Misc. No. 60431 of 2022 before this Hon'ble Court for the grant of his anticipatory bail and the Hon'ble Court vide order dated 15.05.2023 pleased to disposed of the matter with an observation.*

*4. That the petitioner thereafter approached before the Hon'ble Supreme Court of India wide S.L.P. (Cri) No. 10166 of 2023 in which the Hon'ble Apex Court issued notice to the Opp. Party No. 2 and the Opp. Party No. 2 filed counter affidavit stating all the relevant fact.*

*5. That the Hon'ble Apex Court vide order dated 07.12.2023 passed in S.L.P. (Cri) No. 10166 of 2023 remitted back the matter for fresh considering on merit of the case.*

*6. That during pendency of the present case the petitioner solemnized his second marriage with one Muskan Khatoon Daughter of Sheikh Bheeku Quraishi, Resident of Village - Bhaishalotan, Chikpatti, Ward No. 07, and District - West Champaran.*

*7. That the Opp. Party No. 2 is still ready to live with the petitioner if the petitioner keeps her with full honour and dignity.*

*8. That the Opp. Party No. 2 is denying the allegation made by the petitioner that she was pregnant at the time of marriage.”*

12. A counter affidavit filed on behalf of the complainant before the Hon'ble Supreme Court has also been brought on record, and content of the same are reproduced hereinafter:

*1. That I am Respondent No. 2 in the present SLP. I have gone through the contents of the SLP, Synopsis / List of Dates and have understood the same. I am well aware and conversant with the facts of this case and as such able to depose this counter affidavit.'*

*2. That present SLP has been filed against the final Judgment and Order dated 15.05.2023 passed by the Hon'ble High Court of Judicature at Patna, in Crl. Misc.*





*No. 60431 of 2022 whereby the Hon'ble High Court was pleased to allow the anticipatory bail application with direction that the Petitioner must appear before the Court below within a period of 3 weeks and file an affidavit to the extent that he is ready to live along with the Respondent No. 2 herein.*

*3. That case set out by the Petitioner in the present SLP is that the Petitioner has been cheated by as after the marriage he came to know that Respondent No. 2 was pregnant prior to her marriage. The Petitioner has further stated that he has filed a complaint case no. 950/2021 before Judicial Magistrate Bettiah against the Respondent No. 2 and her family members in which he has stated that on 07.09.2021 an ultra sound of Respondent No. 2 was done. In the ultra sound report, the Respondent No. 2 was found to be 20 weeks 2 days i.e. about 5 months pregnant. Further, in his complaint, the Petitioner has stated that parents of Respondent No. 2 were called at the house of Petitioner on 09.09.2021 and on 09.09.2021, the parents of Respondent No. 2 made an agreement on stamp paper that tomorrow morning they will take the Respondent No. 2 to their home. The Petitioner has further alleged in his complaint that on 09.09.2021 parents of Respondent No. 2 slept in her room after having dinner but when the Petitioner woke up in the morning, he saw that Respondent No. 2 and her parents were missing from the house of the Petitioner along with jewellery worth about Rs. 2,00,000/- (Rupees Two Lacs Only) and cash of Rs. 70,000/- (Rupees Seventy Thousand Only) kept by the Petitioner in his almirah.*

*4. The Petitioner did not file the said alleged agreement dated 09.09.2021 intentionally before this Hon'ble Court as the agreement dated 09.09.2021 is false and fabricated document; however, Petitioner has filed only false and manipulated ultra sound report along with SLP. (copy of complaint is Annexure-P3, Page 18 to 22 and copy of ultra sound report is annexure P1 and P2, Page 16 to 17 of SLP paper book).*

*5. The Petitioner and his family member in pre planned manner had cooked up the above said story while manipulating and creating the false document only in order to oust the Respondent No. 2 form matrimonial house and same is apparent from following facts:*

*a. The Petitioner in his complaint case bearing CC No.*



950/2021, filed by him has filed a false and fabricated agreement dated 09.09.2021; however, in order to cover his illegal acts, he did not choose to file the said agreement along with this SLP.

b. As per the Petitioner, only on 07.09.2021, an ultrasound was done and he came to know that Respondent No. 2 is pregnant prior to her marriage; however, the stamp paper upon which agreement was written was purchased by Petitioner on 06.09.2021. This fact shows that Petitioner in a pre planned manner had purchased the stamp paper prior to preparation of ultra sound report dated 07.09.2021. Further, in para 4 of the agreement dated 09.09.2021, it is written that father of the Petitioner is taking back the Respondent No. 2 at his home on 09.09.2021. However, in the complaint filed by the Petitioner, it is stated that on 09.09.2021, the Respondent No. 2 and her parents went to sleep in night after dinner and in the morning of 10.09.2021, the Respondent No. 2 and her parents were missing from the house of Petitioner. Further the alleged agreement only bears the signature of the father of the Respondent No. 2 but in the complaint it is stated that said agreement was signed by the father and mother of the Respondent No.2. The Petitioner has misused the signature of the father of the Respondent No. 2. A true copy of agreement dated 09.09.2021 is annexed herewith and marked as Annexure-R1.

c. That the ultra sound report filed by the Petitioner along with SLP is false and fabricated and same had been created only to defame and harass the Respondent No. 2.

d. That the Respondent No. 2 has recently came to know that the Petitioner had performed the second marriage with another girl namely Muskan Klatoon D/o Sh. Bheeku Qureshi and Rasheeda Khatoon, R/o Bhaishalotan, Chikpati Ward No. 7, Dist. West Chmparan, Bihar. For this reason the Petitioner has made various false documents and has filed false complaint against the Respondent No. 2 and her family member.

6. That Respondent No. 2 herein had filed a complaint bearing CC No. 1742/2021 before the Ld CJM, Motihari, against the Petitioners and others in which she has mentioned that the marriage of Respondent No. 2 and Petitioner was solemnized on 31.07.2021 according to Muslim rites and customs and at the time of marriage, the parents and maternal uncle of Respondent No. 2 spent huge



money and also gave jewellery, cash, household items and other articles to the Petitioner and his family members on their demand. After marriage, the Respondent No. 2 went to her in-laws house on 01.08.2021 where she lived peacefully for some days. Thereafter Petitioner and his family members started demanding gold chain and ring and due to non-fulfillment of said demand, the Petitioner and his family members started committing cruelty and torture including planning to burn her to death. The parents and maternal uncle of Respondent No. 2 tried to pacify the matter, but all in vein and lastly on 09.09.2021, the Petitioner and his family members ousted the Respondent No. 2 from her in-laws house after snatching her belongings, jewellery, stridhan etc. (copy of complaint is Annexure-P4, Page 23 to 28 of SLP paper book).

7. The detail of household items, dowry, stridhan, other articles given by parents and maternal uncle of Respondent No. 2 are as follows:

- a. Cash : Rs.3,00,000/-
- b. Gold Jhumka (10 Gm.) : Rs.46,000/-
- c. Kaan ka Murki 4 (Gold-5 Gm.): Rs. 23,000/-
- d. Silver Pajeb (240 Gm.) : Rs. 14,400/-
- e. Silver Necklace (200 Gm.) : Rs. 10,000/-
- f. Hath ka Chapka (Silver 120 Gm.) : : Rs. 6,200/-
- g. Baal ka Choti (Silver 120 Gm.): Rs. 6,200/-
- h. Baal ka Chapka (Silver 60 Gm.): Rs. 3,100/-
- i. Naak ka Nathuni 3 (Gold 7.5 Gm.): Rs. 36,500/-
- j. 2 Gold rings (5 Gm.) : Rs. 23,000/-
- k. Bed : Rs. 41,550/-
- l. Sofa Set : Rs. 36,550/-
- m. Almirah : Rs. 18,800/-
- n. Dining Table : Rs. 16,000/-
- o. Alna Steel : Rs. 2,350/-
- p. Tea Table : Rs. 4,000/-
- q. Shringar Table : Rs. 7,500/-
- r. Refrigerator : Rs. 28,500/-
- s. Washing Machine : Rs. 16,300/-
- t. Cooler : Rs. 12,800/-
- u. Trunk : Rs. 4,000/-
- v. Peti (36 x 24) : Rs. 1,550/-
- w. Peti (14 x 10) : Rs. 775/-



x. Dinner Set : Rs. 2,550/-

y. Mixer : Rs. 4,500/-

z. Iron : Rs. 1,550/-...

8. That the Ld. SDJM, Sadar, Motihari, in complaint case No. 1742 of 2021 vide Order dated 12.05.2022 issued summon against Petitioner, Ayaz Qureshi and Riyaz Qureshi.

9. That after summoning order, the Petitioner herein, filed anticipatory bail in the Hon'ble Court of Sessions Judge, East Champaran, Motihari, Bihar. The Ld. Sessions Judge, Motihari, vide Order dated 22.09.2022 dismissed the anticipatory bail of the Petitioner on the ground that the Petitioner being husband of Respondent No. 2 is mainly responsible for miserable life of his wife. (copy of Order dated 22.09.2022 is Annexure-P5, Page 29 to 30 of SLP paper book).

10. That against the Order dated 22.09.2022, the Petitioner has filed Cr. Misc. No. 60431 of 2022 in the Hon'ble High Court of Judicature of Patna, for grant of anticipatory bail and the Hon'ble High Court vide final Judgment and Order dated 15.05.2023 disposed off the said anticipatory bail application with direction to take back the Respondent No. 2 at her matrimonial home and also directed the Petitioner to appear before the Court below within a period of 3 weeks and file an affidavit to the extent that he is ready to live along with the Respondent No. 2 herein. However the Petitioner did not comply the order dated 15.05.2023 till date.

11. In view of above said facts and circumstances, particularly when the Petitioner had performed second marriage the present SLP is liable to be dismissed.

12. That no new facts/documents which were not pleaded / filed before the Ld. Courts below, have been pleaded/filed before this Hon'ble Court in this counter affidavit.

13. Considering the fact that there was no point to keep the present bail application pending, this Court after giving opportunity to the parties to reconcile and taking into consideration the fact that petitioner was granted interim relief



with the condition “the petitioner must appear before the court below within a period of three weeks and file an affidavit to the extent that he is ready to live along with the opposite party no.2. In case, opposite party no.2 is not ready, then the Court below is directed to call upon the opposite party no.2 to appear before the court below within the aforesaid period and if it is found that the opposite party no.2 willingly not wants to live along with the petitioner, the petitioner, in either of the case, is directed to be released on bail such terms and conditions as the court below may deem it fit and proper and subject to the condition as laid down under Section 438(2) Cr.P.C.”

14. The Apex Court, especially relating to matrimonial cases, in the case of **Arnesh Kumar V. State of Bihar, (2014) 8 SCC 273**, has laid down guidelines in dealing with the matter of unnecessary arrest in cases under Section 498A IPC. The relevant paragraph is reproduced hereinbelow:-

*“11.1. All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41 CrPC; ... ”*

15. This Court don't need to reiterate the observation made by the Apex Court in Para-10 to 11.1 of the said judgment and recent observation made by the Apex Court in **Asfak Alam**



**Vs. State of Jharkhand & Anr. in Cr. Appeal No. 2207 of 2023** directing the police authorities and the criminal courts to follow the guidelines laid down by the Apex Court in **Arnesh Kumar case (supra)**. In that view, the petitioner has remedy under Section 41(1) Cr.P.C.

16. It is not in dispute that the petitioner has contracted a second marriage without divorcing his first wife, whom he legally wedded. However, he has failed to establish his contention that the entry of the second lady to the existing matrimony is with the prior consent of the respondent-wife; it is a matter of common knowledge that, women regardless of their religion and socio-economic conditions, detest their husbands contracting a second marriage; therefore, the proof of consent requires cogent evidence which is militantly lacking in this case.

17. It is true that the Sheriat permits Muslim to contract more than one marriage. *Mulla's Principles of Mohammeden Law*, 22nd Edn., LexisNexis at paras-255 & 264 states the position of law:

*"255. Number of wives.- A Mohamedan may have as many as four wives at the same time but not more. If he marries a fifth wife when he has already four, the marriage is not void but merely irregular."*

*"264. An irregular marriage is one which is not unlawful in itself, but unlawful for something else..."*

18. It must be borne in mind that merely because an



act is lawful, it does not *per se* become justifiable in married life. Contracting a second marriage by a Muslim may be lawful, but it more causes enormous cruelty to the first wife.

19. The Apex Court in the case of ***DR. NIRMAL SINGH PANESAR versus MRS. PARAMJIT KAUR PANESAR @ AJINDER KAUR PANESAR*** reported in **2023 LiveLaw (SC) 873**, has made following observation with respect to interpretation of the word ‘cruelty’:-

*“ 9. We have given anxious thought and consideration to the submissions made by the learned advocates for the parties in the light of the evidence on record. There could not be any disagreement with the proposition of law canvassed by the learned counsel for the appellant that the allegations of ‘cruelty’ and ‘desertion’ are legitimate grounds for seeking a decree of divorce under Section 13(1) of the said Act. It is well accepted proposition that “cruelty” is a course or conduct of one party which adversely affects the other. The “cruelty” may be mental or physical, intentional, or unintentional. This court in Naveen Kohli (supra) has summarised the principles of law on “cruelty” as under: -*

*“46. The principles of law which have been crystallised by a series of judgments of this Court are recapitulated as under:*

*In Sirajmohmedkhan Janmohamadkhan v. Hafizunnisa Yasinkhan [(1981) 4 SCC 250 : 1981 SCC (Cri) 829] this Court stated that the concept of legal cruelty changes according to the changes and advancement of social concept and standards of living. With the advancement of our social conceptions, this feature has obtained legislative recognition, that a second marriage is a sufficient ground for separate residence and maintenance. Moreover, to establish legal cruelty, it is not necessary that physical violence should be used. Continuous ill-treatment, cessation of marital intercourse, studied neglect, indifference on the part of the husband, and an assertion on the part of the husband that the wife is unchaste are all factors which lead to mental or legal cruelty.*



47. *In Shobha Rani v. Madhukar Reddi [(1988) 1 SCC 105 : 1988 SCC (Cri) 60]* this Court had an occasion to examine the concept of cruelty. The word “cruelty” has not been defined in the Hindu Marriage Act. It has been used in Section 13(1)(i-a) of the Act in the context of human conduct or behaviour in relation to or in respect of matrimonial duties or obligations. It is a course of conduct of one which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. If it is physical, it is a question of fact and degree. If it is mental, the enquiry must begin as to the nature of the cruel treatment and then as to the impact of such treatment on the mind of the spouse. Whether it caused reasonable apprehension that it would be harmful or injurious to live with the other, ultimately, is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse. There may, however, be cases where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or the injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted. The absence of intention should not make any difference in the case, if by ordinary sense in human affairs, the act complained of could otherwise be regarded as cruelty. Intention is not a necessary element in cruelty. The relief to the party cannot be denied on the ground that there has been no deliberate or wilful ill-treatment.

48. *The cruelty alleged may largely depend upon the type of life the parties are accustomed to or their economic and social conditions and their culture and human values to which they attach importance. Each case has to be decided on its own merits.*

49. ....

50. ....

51. ....

52. *This Court in Savitri Pandey v. Prem Chandra Pandey [(2002) 2 SCC 73]* stated that mental cruelty is the conduct of other spouse which causes mental suffering or fear to the matrimonial life of the other. “Cruelty”, therefore, postulates a treatment of the petitioner with such cruelty as to cause a reasonable apprehension in his or her mind that it would be harmful or injurious for the petitioner to live with the other party. Cruelty, however, has to be distinguished from the ordinary wear and tear of family life. It cannot be decided on the basis of the sensitivity of the petitioner and has to be adjudged on the basis of the course of conduct which would, in general, be dangerous for a spouse to live with the other.”





*10. The crux of the various decisions of this Court on the interpretation of the word “cruelty” is that it has to be construed and interpreted considering the type of life the parties are accustomed to; or their economic and social conditions and their culture and human values to which they attach importance. Each case has to be decided on its own merits.”*

Time and again the Apex Court has observed that “marriage is not an ordinary contract, which can be judged by the strict adherence to the terms and conditions. The Society and the Courts are under obligation to resolve the strained matrimonial relationship between the parties.”

“Institution of marriage occupies an important place and plays an important role in the society. Despite the increasing trend of filing the Divorce proceedings in the courts of law, the institution of marriage is still considered to be a pious, spiritual, and invaluable emotional life-net between the husband and the wife in the Indian society. It is governed not only by the letters of law but by the social norms as well. So many other relationships stem from and thrive on the matrimonial relationships in the society. Therefore, it would not be desirable to accept the formula of “irretrievable break down of marriage” as a strait-jacket formula for the grant of relief of divorce.”

20. Today, the demeanour and conduct of the petitioner is such, who in the open court, in loud voice, accepts that he has not given ‘talak’ (divorce) to the opposite party no.2,



and he don't want to live with her and at the same time with high pitch, he has made allegation that opposite party no. 2 was carrying a foetus of 19 weeks and 4 days at the time of marriage in her front and no evidence in this regard has been brought on record and alleges that it has become difficult for him to live along with opposite party no.2, on the other hand, the opposite party no.2 is still ready to live along with the petitioner and has also given information that till date, petitioner has not divorced her nor she has given divorce to the petitioner, I find that the petitioner cannot be allowed to play with the dignity and life of a woman at his own will considering the fact that in I.A. No. 01 of 2024, he has categorically stated that he is ready to go for one time settlement, which I find that the said statement has been made to obtain bail from this Court and in want of any legal steps taken in that regard the conduct of the petitioner at the same time cannot be appreciated.

21. In above mentioned facts and circumstances of the case and the law laid down by the Apex Court, I am not inclined to enlarge the petitioner on pre-arrest bail.

22. The bail application stands dismissed.

23. Let the petitioner be taken into custody forthwith and be produced before the concerned court.



24. It is made clear that time taken for journey to produce the accused (petitioner) before the Magistrate shall be excluded in view of the Article 22(2) of the Constitution. Article 22(2) of the Constitution provides that the arrested person be brought before the nearest Magistrate within 24 hours explicitly excludes the time of journey from the place of arrest to the Court of Magistrate. This Constitutional safeguard has also been incorporated in Sections 57 and 76 of the Cr.P.C.

**(Purnendu Singh, J)**

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