

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.16998 of 2015

Arising Out of PS.Case No. -15 Year- 2014 Thana -MAHILA P.S. District- PATNA

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1. Saurav Kumar Son of Upendra Nath Sah, a resident of village- Fertiliser
Sector, Gami Tola, P.S.- Katihar, District- Katihar

.... Petitioner/s

Versus

1. The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Arvind Kumar Mouar

For the Opposite Party/s : Mr. Hirday Pd.Singh(App)

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**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA**

C.A.V. ORDER.

- 7 21-09-2015 1. Petitioner has sought regular bail in Mahila P.S.
Case No. 15 of 2014 registered for the offences punishable under
Sections 376, 504/34 of the Indian Penal Code.
2. I have already heard all the concerned parties.
3. Petitioner is in jail custody since 10.03.2015 in the
above stated case on the accusation that being relative of the
informant he called her in a hotel on 08.03.2014 and when the
informant went there, he forcibly established physical relation
with her and when informant started weeping after the aforesaid
incident and gave threatening to the petitioner to disclose the



aforesaid incident before the police as well as hotel's staff, the petitioner assured her to solemnize his marriage with her. Again, on 05.04.2014 petitioner called her in the same hotel but did not discuss on the point of marriage and when informant asked her for the marriage, he again assured her but in the meantime, on 07.04.2014, the sister and brother in law of the petitioner gave threatening to informant through their mobile phone. The informant was in constant touch with the petitioner but petitioner stopped talking her and thereafter, informant disclosed the entire incident to her parents who met the family members of the petitioner on 08.04.2014 and initially, they assured the parents of informant to accept the proposal of marriage but later on, they retreated from their assurance resulting institution of the present case on 22.04.2014.

4. Learned senior counsel, Sri Yogesh Chandra Verma, appearing for the petitioner contended that facts of the present case demonstrate that informant was in love with the petitioner and she was a consenting party. It was further contended by him that as a matter of fact, the informant and her family members pressurized the petitioner and his family members for marriage but informant comes under the prohibited degree and that was the reason, petitioner as well as his family members refused to



accept the proposal of marriage and thereafter, the informant, in collusion with her family members, lodged the present case to mount pressure upon the petitioner as well as his family members. It was further contended by him that no such occurrence of rape, as propounded in the written report, had ever been taken place. It was further contended by him that even if the prosecution story assumed to be true, then also, it is apparent from the face of written report that the informant was in touch with the petitioner much prior to institution of the present case and alleged proposal of marriage was given by the petitioner after establishment of physical relation and, therefore, the aforesaid fact reflects that informant was a consenting party and, therefore, no case under Section 376 of the Indian Penal Code is made out and at best, it is a case of breach of agreement.

5. On the other hand, learned counsel appearing for the informant, vehemently, opposed the prayer submitting that after insertion of Section 114 A of the Evidence Act, if the victim of rape denies the factum of consent, the court has no option except to presume that the victim did not give her consent for sexual relation. It was further contended by him that the petitioner being relative of the informant was in dominant position and therefore, the offence committed by the petitioner comes under the



purview of Section 376 (2) (f) of Indian Penal Code which provides punishment with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine. Continuing his submission, he submitted that in the present case, the statement of informant was recorded under Section 164 of the Cr.P.C. and in the aforesaid statement, she again repeated the story of rape and, therefore, it is prima facie proved that the informant was subjected to sexual assault by the petitioner and, therefore, in view of Section 114(A) of the Indian Evidence Act, this court must presume that there was no consent of the informant.

6. Having heard the above stated contentions of both the parties, I went through the case diary. It is an admitted case of the prosecution that informant used to meet with the petitioner much prior to institution of the present case and for the first time, allegedly, petitioner established his physical relation with the informant in a hotel on 08.03.2014. In course of investigation, the investigating officer visited the aforesaid hotel and found that the informant and petitioner had stayed in the said hotel on 08.03.2014. Furthermore, it also came to light at para-83 of the

case diary that petitioner and informant used to chat with each others since long. Therefore, it is apparent from the aforesaid fact that petitioner and informant were in constant touch from before the institution of the present case.

7. No doubt, Section 114(A) of the Indian Evidence Act says that if the prosecution succeeds to prove the sexual intercourse, the court is bound to presume that there was no consent of victim of rape but it is well settled principle of law that every presumption is always rebuttable. Moreover, at present, the court is only considering the bail petition and Section 114(A) of the Indian Evidence Act will come in course of trial, if prosecution succeeds to prove the factum of sexual intercourse by the petitioner. The investigation of this case has already been completed and charge sheet has also been submitted against the petitioner. Therefore, in my view, it is not desirable to keep the petitioner behind the bar only for the purpose of trial because there is nothing on the entire case diary or record to show that if petitioner is released on bail, he may tamper with the prosecution evidence.

8. On the basis of aforesaid discussions, this bail petition is allowed and it is ordered that petitioner, above named, be released on bail on furnishing bail bonds of Rs. 10,000/- (Ten

Thousand) with two sureties of the like amount each to the satisfaction of Sri Ranjit Kumar, Judicial Magistrate 1st Class, Patna in connection with Mahila P.S. Case No. 15 of 2014, subject to condition that if in course of trial any complain is made by the informant against the petitioner regarding tampering with the prosecution evidence, the concerned court shall be at liberty to cancel the bail bonds of the petitioner after due and proper enquiry.

(Hemant Kumar Srivastava, J)

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