

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.17425 of 2016

Arising Out of PS.Case No. -56 Year- 2015 Thana -MAHILA PS District- KATIHAR

Tuntun Mandal, Son of Bisu Mandal, Resident of village- Pothiya (O.P. Salmari), P.S.- Azam Nagar, District- Katihar (Bihar)

.... Petitioner

Versus

1. The State of Bihar
2. Mostt. Veena Devi, wife of Late Tinku Mandal, resident of village- Pothia (O.P. Salmari), P.S.- Azam Nagar, District- Katihar (Informant)

.... Opposite Parties

Appearance :

For the Petitioner : Mr. Pravin Chandra Prasad, Advocate

For the Opposite Parties : Mr. M.K.Khare (App)

CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN
ORAL ORDER

3 24-05-2016 Heard learned counsel for the petitioner and the State.

The petitioner apprehends his arrest in connection with Mahila P.S. Case No. 56/2015 registered for offences punishable under Sections 376, 323, 506 of the Indian Penal Code.

As per allegation, the petitioner had committed rape upon the informant on 25.08.2015. The petitioner is brother-in-law (*dewar*) of the informant. It is further alleged in the FIR that, thereafter, family members threatened the informant and the brother-in-law continued to indulge in sexual relationship with the informant on the pretext of promise of marriage, however, when the informant started pressurizing him to marry her then he backed away and even after panchayati, he did not relent.



It is contended that there is a delay of about three months in lodging the FIR. Learned counsel submits that it is evident from the allegation that infact the relationship was on consent of the informant. It is also contended that even as per allegation, since the petitioner did not relent and refused to marry, the FIR was lodged after three months. Learned counsel relies upon a decision of Apex Court rendered in **(2003) 4 SCC 46 Uday vs. State of Karnataka** holding that if the prosecutrix has sufficient intelligence to understand the significance and moral quality of the act and she was consenting on the pretext of marriage, the allegation would not come within the ambit of Section 376 of Indian Penal Code as a false promise is not a fact within the meaning of penal code.

It is urged that if the allegation of rape was correct and such act was not with the consent of the informant, the FIR ought to have been lodged immediately and not after three months of the date of occurrence.

Having regard to the facts and circumstances of the case, let the petitioner, namely, Tuntun Mandal be released on bail in the event of arrest/surrender before the court below within a period of six weeks from today in Mahila P.S. Case No. 56/2015, on furnishing bail bond of Rs.10,000(Ten Thousand

Rupees) with two sureties of the like amount each to the satisfaction of S.D.J.M., Katihar subject to the conditions as laid down under sub-section(2) of Section 438 of the Code of Criminal Procedure.

(Dr. Ravi Ranjan, J.)

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