

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.18348 of 2016

Arising Out of PS.Case No. -5 Year- 2016 Thana -MAHILA P.S. District- LAKHISARAI

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Sharwan Yadav Son of Ragho Yadav Resident of Jainagar Bari Kabaiya,
P.S. Kabaiya, O.P. District Lakhisarai,.

.... Petitioner

Versus

The State of Bihar

.... Opposite Party

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Appearance :

For the Petitioner : Mr. Yogesh Chandra Verma, Sr. Advocate
Mr. Bibhuti Narayan, Advocate
For the Informant : M/s P.P. N. Sahi, Mr. B.K.Tiwary, Mr.
R.K.Yadav, Advocates
For the State : Mr. Ashok Kumar Singh, APP

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN
ORAL ORDER

2 03-05-2016 Heard learned counsel for the petitioner, the informant and
the State.

Petitioner apprehends his arrest in a case registered for the
offences punishable under sections 366/420 of the Indian Penal
Code.

As per the allegation set up in the First Information Report,
the petitioner came in talking term with the daughter of the
informant aged about 18 years since last 3-4 years and, on
repeated false pretext of marrying her, he developed good
relationship. The petitioner allegedly used to meet her daughter at
her sister's place when the girl was sent to her house. On
10.02.2015 the petitioner allegedly called the daughter of the



informant and, when she went to his house, he did not allow her to go back even with the informant and kept her in his house. Ultimately police recovered the girl from the house of the petitioner.

Girl's statement has been recorded under section 164 of the Code of Criminal Procedure(hereinafter to be referred to as "the Code") in which she has stated her age to be about 19 years and she has stated that on the pretext of marriage the petitioner developed physical relationship with her, however, the girl was ousted from his house and, in fact, when she was going away, the petitioner called the media persons and forced the girl to give wrong statement and, thereafter, the police came and took her back.

Learned counsel for the petitioner submits that from perusal of the First Information Report and the statement of the girl recorded under section 164 of the Code, it is manifest that there was good and intimate relationship between them and the girl was major and matured and, as such, the alleged offences are not made out.

Learned counsel for the informant has submitted that when the physical relationship was made the girl was minor, though, of course, she was major when the First Information Report was

lodged or her statement was taken under section 164 of the Code.

Per contra, learned senior counsel for the petitioner has submitted that it is nowhere stated in the First Information Report or in her statement recorded under section 164 of the Code as to in which year or month the petitioner developed physical relationship with her rather a vague statement has been made. No one can come to the conclusion that on the basis of such statement that physical relationship was made when she was minor. Learned senior counsel for the petitioner also submits that breach of promise of marriage is unknown to the Penal Code and he placed reliance upon a decision of the Apex Court in **Uday v. State of Karnataka [(2003) 4 Supreme Court Cases 46]** and submits that even if it is assumed that the physical relationship was developed few months even before attaining majority or at the verge of majority, she must have attained sufficient intelligence to understand the significance and moral quality of the act.

Having regard to the facts and circumstances of the case, let the abovenamed petitioner, namely, Sharwan Yadav, be released on bail in the event of arrest/surrender before the court below within a period of six weeks from today in Lakhisarai Mahila Police Station Case No. 5/2016 on furnishing bail bond of

Rs.10,000/- (Ten Thousand Rupees) with two sureties of the like amount each to the satisfaction of the Chief Judicial Magistrate, Lakhisarai subject to the conditions laid down under sub-section (2) of Section 438 of the Code of Criminal Procedure.

However, it is made clear that whatever observation has been made in this order is only for the purpose of consideration of bail application. The trial court would proceed to conclude the trial without being prejudiced by the present observation of this Court.

(Dr. Ravi Ranjan, J)

SC/-

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