

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.21572 of 2016

Arising Out of PS.Case No. -47 Year- 2014 Thana -MAHILA P.S. District- BHABHUA (KAIMUR)

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Pushkar Anand son of Sri Umakant Mehta, Resident of Rana Bhawan,
Dilwarpur, Monghyr, District- Monghyr at present Commandant M.M.P.,
Arrah

.... Petitioner/s

Versus

1. The State of Bihar
2. Miss. Nirmala Kumari, Sub divisional Police Officer, Bhabhua, District-
Kaimur at Bhabhua.

.... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Kanhaiya Prasad Singh, Sr. Advocate Mr. Ravindra Kumar Shukla
For the State	:	Mr. Dilip Kumar Sinha, APP
For the Informant	:	Mr. Sandeep Kumar Mr. Vivekanand Singh

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CORAM: HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL ORDER

8 08-09-2016 Heard learned Senior Counsel for the petitioner and learned
counsel appearing on behalf of the Informant as well as learned
Additional Public Prosecutor for the State.

Learned Senior Counsel Mr. Kanhaiya Prasad Singh
submits that the petitioner is a responsible police officer who is
apprehending his arrest in connection with Bhabhua (Mahila) P.S.
Case No. 47 of 2014 registered for the offences punishable under
Sections 376(2)(B), 120(B), 354(A), 354(D), 509 and 506 of the
Indian Penal Code.

The allegation against the petitioner is that he, as
Superintendent of Police posted at Kaimur at Bhabhua, has on the
pretext of marriage committed sexual offences against the

Informant. It is submitted that the petitioner, only two days after the joining of the Informant, the petitioner started extending a friendly hand towards the Informant through Facebook and WhatsApp messages. Since the Informant was posted as Sub-divisional Police Officer, Bhabhua, District-Kaimur, she developed a firm belief that the petitioner was seriously interested in marriage with her and she started talking to her family members. It is further alleged that since the petitioner started frequenting her residence, she gradually developed a close relationship with him and, thereafter, they also came into physical contact. After sometime, the Informant was also asked by the mother of the petitioner to convey her date and time of her birth so that her horoscope could be matched with the horoscope of the petitioner so that the marriage in question could be solemnized. It was during this period that the petitioner and the Informant developed physical relations with each other and the intimacy continued till the day, when the petitioner refused the proposal of marriage stating that the horoscope did not tally and she was having "*Mangla-mangli Dosh*". It is alleged by the Informant that on the pretext of marriage, the petitioner Pushkar Anand tortured her mentally and physically and when he threatened to spoil her career as a police officer in his official capacity, she proceeded to

lodge the present case i.e., Bhabhua (Mahila) P.S. Case No. 47 of 2014. It is the present case in which the petitioner is apprehending his arrest.

Learned Senior Counsel for the petitioner has submitted that there is no such story as is being made out by the Informant in her First Information Report. Rather, the present case has been lodged only as a vendetta to the petitioner's action, in taking up disciplinary proceeding against the Informant of the present case. It is submitted that the First Information Report was lodged on 29.12.2014 and just prior thereto on 27.12.2014, the petitioner as a Superintendent of Police had initiated disciplinary action against the Informant vide letter No. 402 dated 27.12.2014 (Annexure-4). Consequently, faced with such a situation, the Informant lodged the present case making malicious and baseless allegations against the petitioner. Learned Senior Counsel for the petitioner further submits that though the petitioner has acted in his official capacity against the Informant, the Informant took her revenge by filing the present case with the sole intention of not only tarnishing his reputation, but also to ruin his career as an IPS Officer. It is further submitted that the Informant was placed before a Medical Board for examination and the Medical Board after due examination of the Informant has submitted its report in which the allegations

have not been substantiated against the petitioner. So far as the present medical report is concerned, the case as against the petitioner under Section 376 (2)(B) of the Indian Penal Code cannot be proved on the basis of such a medical report and thus, learned Senior Counsel submits that the only offence which is non-bailable, does not stand substantiated in connection with the present case. Learned Senior Counsel further contends that during the course of investigation, the Investigating Officer demanded several documents and materials from the Informant which she refused to produce before the Investigating Officer. During the course of investigation, as has emerged in paragraph No. 83 of the case diary, when the Investigating Officer asked the Informant to give certain clarifications and also her mobile phone and electronic messages so that the messages could be tallied, she refused to give the same to him and told him to consult her after 05.05.2016, for reasons best known to herself. It is further submitted that the matter was entrusted to the C.I.D. who then took up investigation of the present case on 11.05.2015. As per the investigations, a supplementary diary was also submitted with regard to the investigations conducted by the C.I.D. which has also been produced before this Court along with the case diary of Bhabhua (Mahila) P.S. Case No. 47 of 2014.



Learned Senior Counsel further submits that on several occasions, the Investigating Officer of the case wanted to collect the mobile phone of the Informant, but she has, till date declined to hand over the same so that the same may be produced before the Forensic Science Laboratory for certification and for verification. Thus, learned Senior Counsel submits that in view of the provisions of law, without such certification, the mobile messages either by WhatsApp or through SMS cannot be considered to be authentic and could not be used as an evidence against the present petitioner. Learned Senior Counsel further submits that all along the investigation, the petitioner has subjected himself to the investigating authorities and provided all possible assistance and has never evaded the investigation or precluded himself from co-operating in the same, at any stage. He, thus, submits that being a responsible police officer, he may not be subjected to the ignominy of custodial interrogation as he has presented himself before the appropriate investigating authorities. He further submits that as and when required, the petitioner shall be available for interrogation and also on submission of chargesheet, will co-operate in the trial so that it may reach its logical conclusion.

On the previous occasion, when the matter was taken up, a



co-ordinate Bench of this Court on 20.05.2016 had directed that the Informant Nirmala Kumari the Sub-divisional Police Officer /Deputy Superintendent of Police of Bhabhua to make herself available for further medical examination as according to the Informant, the Medical Board, which had earlier submitted its report was neither clear nor distinct and was thus wholly false. It is further submitted earlier that the investigation was not at all satisfactory on that count, on account of the influence and clout, the petitioner wielded in police circles. It was for that reason also that the case has been handed over to the C.I.D. The Informant has expressed some reservations regarding medical examination of the Informant and as such, with the consent of the counsel for the Informant, this Court had directed the medical examination of the Informant to be conducted by a Board of female gynecologists to be nominated by the Principal / Principal In-charge / Superintendent /In-charge Superintendent, Patna Medical College and Hospital, Patna. However, the Informant did not appear before the Medical Board which was constituted for her examination and has now declined to face any further medical examination.

As earlier, her counsel had made a categorical submission that she was ready to do so, this Court took the precaution to obtain a fresh affidavit from her, denying the Medical



Examination and that she would not subject herself to any further medical examination. The said denial by the Informant has been brought on record by means of a supplementary affidavit filed on 07.09.2016, in which at paragraph No. 3, she has clearly stated that such a consent by the Advocate for medical examination was given in this Court without instructions to him and that in paragraph No. 5, she has further stated that since the medical examination report and other materials collected during the course of investigation are already on record, no further medical examination is required at this stage for deciding the present anticipatory bail application. Thus, this Court has no option, but to proceed on the medical examination report available in the diary which was produced at the outset of the said case itself.

Learned counsel appearing on behalf of opposite party No. 2 seriously contested the matter and submitted that the Informant, being a sub-ordinate officer of the present petitioner was lured into the relationship including having physical relations on the pretext of marriage and such facts have come all through the investigation. It is further submitted by learned counsel for the opposite party No. 2 that it was only under threat of the disciplinary proceedings that the Informant was constrained to bring the entire facts and circumstances regarding her sexual



exploitation by filing the present case against the present petitioner, Superintendent of Police. He further submits that the call details of the Informant which was made with the petitioner clearly reveal their relationship and all messages and as well as WhatsApp records, print outs of which have been produced before this Court and available case diary reveal, there was indeed promise to marriage which was, subsequently, broken on the pretext of horoscope not tallying. It is further submitted that the Informant has provided all necessary materials at the very outset to the investigating authorities and the charge that she is not providing the material is wholly baseless as the CDRs have only been made available to the investigation and no further material is required to be given by the Informant so that the case can proceed further.

Learned counsel for the Informant submits that in paragraph No. 173 of the case diary, the fact has come on record that the petitioner was in the habit of indulging in such activities as he had lured another such lady in the past also. The said lady has deposed in the proceeding which was conducted against the petitioner at the departmental level under the guidelines of the Vishakha case and in that case also, sufficient material has come on record to indicate the complicity of the petitioner. As such, the

petitioner does not deserve the benefit of anticipatory bail. Learned counsel for the Informant further submits that, though the investigation was complete in all respects and the charge-sheet was required to be submitted, the Investigating Officer of the case, for some oblique reason, kept the matter pending and has not submitted the chargesheet till date. It is alleged that the filing of the chargesheet was deliberately delayed on account of the filing of a letter by the mother of the petitioner in the higher echelons of the police circle.

Learned counsel appearing on behalf of the Informant submits that the case of the Informant is squarely covered by the decision of the Apex Court wherein, a similar situation, had arisen with regard to manner of consent and what would constitute rape or consensual sex. The said judgment reported in (2013) 7 SCC 675 in the case of Deepak Gulati Vs. State of Haryana distinguishes at paragraph No. 21 which reads thus:-

“21. Consent may be express or implied, coerced or misguided, obtained willingly or through deceit. Consent is an act of reason, accompanied by deliberation, the mind weighing, as in a balance, the good and evil on each side. There is a clear distinction between rape and consensual sex and in a case like this, the court must very carefully examine whether the accused had actually wanted to marry the victim, or had mala fide motives, and had made a false promise to this effect only to satisfy his lust, as the latter falls within the ambit of cheating or deception. There is a



distinction between the mere breach of a promise, and not fulfilling a false promise. Thus, the court must examine whether there was made, at an early stage a false promise of marriage by the accused; and whether the consent involved was given after wholly understanding the nature and consequences of sexual indulgence. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused, and not solely on account of misrepresentation made to her by the accused, or where an accused on account of circumstances which he could not have foreseen, or which were beyond his control, was unable to marry her, despite having every intention to do so. Such cases must be treated differently. An accused can be convicted for rape only if the court reaches a conclusion that the intention of the accused was mala fide, and that he had clandestine motives.”

Lastly learned counsel for the opposite party has also submitted that the petitioner being higher in the police circle is likely to influence the investigation and tamper with the evidence and, therefore, he should not be extended the privilege of anticipatory bail.

Learned counsel appearing on behalf of the State has also gone through the case diary in detail. He further submits that the allegations against the petitioner have been investigated in detail and at many stages, it has been found that the call details reveal that there was in fact such interaction between the parties, i.e., the Informant and the present petitioner, as they have been found to be

communicating with each other on their mobile phones for prolonged periods. The Investigating Officer of the case has further stated that the bodyguard as well as the cook have submitted that on certain occasions, the petitioner had visited the residential house of the Informant and they had been meeting each other.

It is submitted on behalf of the State that the First Information Report is supported by the statement of the victim Informant under Section 161 and 164 of the Cr. P.C. and that the Superintendent of Police, C.I.D., in paragraph No. 194 had directed on 06.04.2016 for the chargesheet to be submitted and for issuance of warrant of arrest by the High Court. However, subsequently, under instructions from the higher officials, the matter is being investigated on several counts and a few of the issues on which investigation is to be made is yet to be concluded.

Responding to the submission made by opposite party No. 2 and the State, learned counsel for the petitioner submits that at paragraph No. 226 of the case diary itself, i.e., in June, 2016, 12 points were raised by the mother of the petitioner for being further investigated. By the orders of the Additional Deputy Inspector General of C.I.D. further investigations were taken up as under the provisions of the Cr. P.C. Section 173(3) and (8), the superior



officials of the police, who are appointed under Section 158 is empowered to order further investigation in the matter. He further submits that though the petitioner has co-operated and provided his mobile to the Investigating Officer for the call details to be duly certified by the competent authority so that they can be used as evidence, the Informant has categorically refused to provide the same to the authorities and, therefore, the investigation is still lingering and chargesheet could not be submitted. He further submits that the petitioner is co-operating in the investigation, but the present Informant has been evading bringing to the Court the true picture by withholding the relevant materials from the investigation.

Learned Senior Counsel for the petitioner has also relied on a judgment reported in 2014(4) P.L.J.R. (SC) 334 in the case of Anvar P.V. v. P.K. Basheer and other, paragraph Nos. 14 and 15 of which are as follows:-

“14. Under Section 65-B(4) of the Evidence Act, if it is desired to give a statement in any proceedings pertaining to an electronic record, it is permissible provided the following conditions are satisfied:—
(a) There must be a certificate which identifies the electronic record containing the statement;
(b) The certificate must describe the manner in which the electronic record was produced;
(c) The certificate must furnish the particulars of the device involved in the production of that record;

- (d) The certificate must deal with the applicable conditions mentioned under Section 65-B(2) of the Evidence Act; and
- (e) The certificate must be signed by a person occupying a responsible official position in relation to the operation of the relevant device.

15. It is further clarified that the person need only to state in the certificate that the same is to the best of his knowledge and belief. Most importantly, such a certificate must accompany the electronic record like computer printout, Compact Disc (CD), Video Compact Disc (VCD), pen drive, etc., pertaining to which a statement is sought to be given in evidence, when the same is produced in evidence. All these safeguards are taken to ensure the source and authenticity, which are the two hallmarks pertaining to electronic record sought to be used as evidence. Electronic records being more susceptible to tampering, alteration, transposition, excision, etc. without such safeguards, the whole trial based on proof of electronic records can lead to travesty of justice.

It was submitted by learned Senior Counsel that the above quoted paragraph No. 14 clearly states the parameter in which such electronic record is permissible in evidence under Section 65B(4) of the Evidence Act.

It is thus evident that an electronic evidence is more susceptible to tampering, alteration, transposition, excision, etc. without such safeguards, the whole trial based on proof of electronic records cannot be used in a trial unless it is accompanied by the certificate issued in the appropriate manner. The Informant by withholding the said electronic mail is, thus, trying to scuttle

the cause of justice by not presenting them before the investigating authorities for certification. As such, the said material sought to be used against the petitioner could not be permitted in any Court of law.

Learned Senior Counsel appearing on behalf of the petitioner has further referred to another judgment reported in (2016) 1 SCC 152 wherein the guidelines/parameters for grant of anticipatory bail has been fixed. The said citation in the case of Bhadresh Bipinbhai Sheth Vs. State of Gujarat and Another reported in (2016) 1 SCC 152 reads as under:-

“23. The principles which can be culled out, for the purposes of the instant case, can be stated as under:

- (i)
- (ii)
- (iii) It is imperative for the courts to carefully and with meticulous precision evaluate the facts of the case. The discretion to grant bail must be exercised on the basis of the available material and the facts of the particular case. In cases where the court is of the considered view that the accused has joined the investigation and he is fully cooperating with the investigating agency and is not likely to abscond, in that event, custodial interrogation should be avoided. A great ignominy, humiliation and disgrace is attached to arrest. Arrest leads to many serious consequences not only for the accused but for the entire family and at times

for the entire community. Most people do not make any distinction between arrest at a pre-conviction stage or post-conviction stage.

- (iv)
- (v)
- (vi)
- (vii)

(viii) Discretion vested in the court in all matters should be exercised with care and circumspection depending upon the facts and circumstances justifying its exercise. Similarly, the discretion vested with the court under Section 438 Cr. P.C. should also be exercised with caution and prudence. It is unnecessary to travel beyond it and subject the wide power and discretion conferred by the legislature to a rigorous code of self-imposed limitations.

(ix) No inflexible guidelines or straitjacket formula can be provided for grant or refusal of anticipatory bail because all circumstances and situations of future cannot be clearly visualised for the grant or refusal of anticipatory bail. In consonance with legislative intention, the grant or refusal of anticipatory bail should necessarily depend on the facts and circumstances of each case.

(x) We shall also reproduce para 112 of the judgment wherein the Court delineated the following factors and parameters that need to be taken into consideration while dealing with anticipatory bail:

- (a) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;
- (b) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;
- (c) The possibility of the applicant to flee from

justice;

(d) The possibility of the accused's likelihood to repeat similar or other offences;

(e) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;

(f) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;

(g) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution, because overimplication in the cases is a matter of common knowledge and concern;

(h) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to free, fair and full investigation, and there should be prevention of harassment, humiliation and unjustified detention of the accused;

(i) The Court should consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

(j) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.”

Having considered all aspects of the matter and in view of the fact that the allegation of rape and offence under

Section 376(2) of the Indian Penal Code is a serious issue, this Court can proceed only on the basis of the Medical Report available on record. However, when the medical report which has been produced before this Court, is not showing any sign of any rape on the victim/Informant and the Informant has categorically denied subjecting herself to any further medical examination, this Court has no option, but to do rely on the report which has been placed before it with regard to the allegation made under Section 376(2) of the Indian Penal Code. Furthermore, the investigation is almost at its penultimate stage and the chargesheet is likely to be submitted shortly. It is advisable that the same be done at the earliest to prevent any further interference from any source as both the petitioner and the Informant are responsible police officers. Such lingering of investigation would only send wrong signals across the society. However, in the interest of justice and also because of the undertaking given to this Court that the petitioner will at all possible times, subject himself to any further investigation and be present before the Court to co-operate with the investigation and also appear before it after submission of chargesheet in the trial Court and not absent himself from the trial on any two consecutive dates, let the petitioner Pushkar Anand, in the event of his arrest / surrender within a period of four weeks



from the date of receipt/production of a copy of this order, be enlarged on bail on furnishing bail bonds of Rs. 10,000/- (ten thousand) with two sureties of the like amount each to the satisfaction of the learned Chief Judicial Magistrate, Bhabhua in connection with Bhabhua (Mahila) P.S. Case No. 47/2014, subject to the conditions as laid down under Section 438(2) of the Cr. P.C., and also subject to the conditions as is being imposed herein.

- I. Let the petitioner file an undertaking to the Court that he shall appear as and when required by the Court on each and every date after submission of chargesheet.
- II. One of the bailors shall be the close blood relative of the petitioner, namely, mother/father/brother/sister who shall keep the Court apprised of the movements of the petitioner, his place of posting etc., including any change of address.
- III. The petitioner shall not leave the country except with the permission and with due information to his controlling officer or after obtaining permission of the Court and after due information only will he be permitted to do so.

It is made clear that if the petitioner does not honour his

undertaking given to this Court, it shall be open to the opposite party/investigating authorities to move this Court for modification of the present order including cancellation of the same, if, at all, required.

The submissions advanced by the parties are merely for consideration of anticipatory bail and may not prejudice the trial of the case at any stage.

(Anjana Mishra, J)

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