

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.41778 of 2016

Arising Out of PS.Case No. -59 Year- 2016 Thana -BARGANIA District- SITAMARHI

Md. Shadab

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Anuj Kumar

For the Opposite Party/s : Mr. Sri Jai Narain Thakur

CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 06-10-2016 Heard the learned senior counsel, Mr. Yogesh Chandra Verma, for the petitioner. Heard the learned A.P.P. and the learned counsel for the informant.

The petitioner, Md. Shadab, apprehends his arrest in Bairgania P.S. Case No.59 of 2016 under Section 341, 323, 427, 376, 380, 504, 506 / 34 IPC and Sections 66, 66A of the Information Technology Act.

It appears that the informant lodged FIR alleging that this petitioner committed rape for many time on the pretext that he will marry her. When the informant fixed the marriage of his daughter, the present petitioner sent the mobile video to the would be husband of the daughter of the informant. As a result of which the marriage was cancelled and the petitioner also did not agree to marry the daughter of the informant.



The learned senior counsel for the petitioner submitted that according to FIR itself, the victim girl is said to be aged about 18 years and for many times, physical relation was established which clearly indicate that she was the consenting party. Therefore, it is not a case of rape as in many case, the Hon'ble Supreme Court has held that if adult lady a consently party for physical relation, it will not constitute rape within the meaning of the definition under Section 375 IPC. So far video is concerned, the learned senior counsel submitted that it will come under the Information Technology Act and the offences alleged to have been committed under the said Act, all bailable.

On the other hand, the learned A.P.P. for the State and learned counsel for the informant submitted that in the statement under Section 164 Cr.P.C., the victim lady, namely, Najima Khatoon has clearly supported that by using force and by threatening while she was going to school, the petitioner took her to Nepal where she was raped and video was prepared by this petitioner. Although she denied but she was assaulted and thereafter petitioner told her to go to house.

In view of the statement of the victim lady under Section 164 Cr.P.C. prima facie, in my opinion, it is not a case for grant of anticipatory bail. All the arguments which have been advanced by

the learned senior counsel for the petitioner are all questions that can be finally decided in the criminal proceeding.

Thus, this anticipatory bail application is dismissed.

If regular bail application is filed by the petitioner, this order rejecting the anticipatory bail will not affect the merit of the case and it will not prejudice the petitioner.

(Mungeshwar Sahoo, J)

Sanjeev/-

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