

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.38082 of 2016

Arising Out of PS.Case No. -29 Year- 2016 Thana -MAHILA P.S. District- MADHUBANI

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Md. Aslam @ Bhutan, Son of Md. Alam @ Doctor Jhunna, Resident of Musanagar, Ward No. 13, P.S. Madhubani Town, District Madhubani.

.... Petitioner

Versus

The State of Bihar

.... Opposite Party

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Appearance :

For the Petitioner	:	Mr. Subhash Kumar Jha, Advocate
For the State	:	Mr. Sri Atul Chandra, A.P.P.
For the informant	:	Mr. D. K. Trivedi, Advocate

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN
ORAL ORDER

2 26-09-2016

Heard parties.

The petitioner apprehends his arrest in a case registered for offence punishable under Sections 376 of the Indian Penal Code.

It is contended on behalf of the petitioner that it is apparent from the first information report that there was physical relationship with consent between the parties on the alleged promise given by the petitioner that he would marry her but, thereafter, he did not marry. It is further contended that in the F.I.R. she has disclosed her age to be of 19 years, whereas, in the statement recorded under Section 164 Cr.P.C., she has disclosed her age to be 15 years but the court has assessed her age to be 18 years. The medical Board, who had examined her, had found her age to be 16-17 years. The Medical Board has also not found any

medical evidence of rape. Learned counsel places reliance upon a decision of the Apex Court rendered in **Uday Vs. State of Karnataka [(2003) 4 SCC 46]** wherein observation has been made that where the prosecutrix had sufficient intelligence to understand the significance and moral quality of the act and she was consenting openly, that would not amount to rape and, thus, Section 376 would not be attracted as false promise is not a fact within the meaning of Penal Code.

Having regard to the facts and circumstances of the case, let the above named petitioner be released on bail in the event of arrest/surrender before the court below within a period of six weeks from today in Madhubani Mahila P.S. Case No. 29 of 2016, 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., Madhubani subject to the conditions as laid down under sub-section(2) of Section 438 of the Code of Criminal Procedure.

(Dr. Ravi Ranjan, J.)

Sanjay-II/-

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