

Arising Out of PS.Case No. -167 Year- 2015 Thana -DARBHANGA SADAR District-
DARBHANGA

.... Petitioner

The State of Bihar

.... Opposite Party/s

For the Petitioner : Mr. Kedar Jha, Advocate
For the State : Mr. Lalan Kumar (App)

3 17-02-2016 Heard learned counsel for the petitioner and the
State.

Petitioner apprehends his arrest in a case filed under Sections 376,341,323,504/34 of the India Penal Code.

As per the allegation, on the pretext that petitioner will marry the informant, she allowed him sexual intercourse due to which she became pregnant also but the pregnancy got aborted. This happened one year back and in the next year also i.e. on 21.04.2015, in view the promise made by him and his parents that they will allow him to marry the informant, she gave consent to the petitioner for sexual intercourse, however, subsequently they breached the promise and they did not even follow the command of *panchayat*. Thereafter,

First Information Report was lodged.

Learned counsel for the petitioner submits that it is apparent from the allegation made that the informant was a consenting party. He further submits that false promise is not a fact within the meaning of Penal Code as has been held by the Apex Court in **(2003) 4 Supreme Court Cases 46 Uday v. State of Karnataka**. In that case also, the allegation was that consent was given by the prosecutrix to sexual intercourse with the accused-appellant on the promise that he would marry her on a later date and since the age of the prosecutrix was 19 years on the date of occurrence, it was held that on that basis, case of rape cannot continue against the accused. The medical report on the basis of radiological investigation has found the age of the informant about 18 years.

Learned counsel submits that Supreme Court in **AIR 1982 Supreme Court 1297, Jaya Mala v. Home Secretary, Government of Jammu & Kashmir & others** has observed that one can take judicial notice that the margin of error of age ascertained by the radiological examination is two years on either side. It is submitted that since the victim's age has been found to be about 18 years on the date of radiological examination, it can easily be assumed that she had sufficient intelligence to

understand the significance and moral quality of the act she was consenting from very beginning.

Having regard to the facts and circumstances of the case, let the petitioner, namely Ashok Kumar Sahni @ Ashok Sahni be released on bail in the event of arrest/surrender before the court below within a period of six weeks from today in Sadar (Bhalpatti O.P.) P.S. Case No. 167/2015, on furnishing bail bond of Rs.10,000(Ten Thousand Rupees) with two sureties of the like amount each to the satisfaction of Judicial Magistrate 1st Class, Darbhanga 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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