

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Miscellaneous No.26222 of 2016**

Arising Out of PS.Case No. -71 Year- 2016 Thana -BARARI District- KATIHAR

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Azahrul, son of Md. Serajul, Resident of Village- Marghiya Sadar Tola,  
Police Station- Barari, District- Katihar.

.... .... Petitioner

Versus

The State of Bihar

.... .... Opposite Party/s

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**Appearance :**

For the Petitioner/s : Mr. Najeeb Ahmad, Advocate

For the Opposite Party/s : Mr. Rajendra Singh Shastri Ji, A.P.P.

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**CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN**  
**ORAL ORDER**

2      04-07-2016

Heard learned counsel for the petitioner and the State.

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

It is contended on behalf of the petitioner that it is apparent from the FIR that there was consensual sexual relationship between the petitioner and the informant. It is further contended that there is vital variation in the version given in the FIR and that in the statement of the informant recorded under Section 164 Cr.P.C. as it is nowhere stated in the FIR that she raised alarm and on that her parents woke up and in the meantime, the petitioner fled away. From perusal of the FIR, it is apparent that as per assurance given for marriage, she became ready for sexual relationship and after 15 days of the occurrence, the FIR

was lodged. It is urged on behalf of the petitioner that if consent for sexual intercourse was given on promise of marriage that would not amount to rape. Learned counsel places reliance upon a decision of the Apex Court 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 as 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 petitioner, namely, Azahrul be released on bail in the event of his arrest/surrender before the court below within a period of six weeks from today in connection with Barari P.S. Case No.71/2016, on furnishing bail bond of Rs.10,000 (Ten Thousand Rupees) with two sureties of the like amount each to the satisfaction of Additional Chief Judicial Magistrate-V, Katihar subject to the conditions as laid down under sub-section(2) of Section 438 of the Code of Criminal Procedure.

**(Dr. Ravi Ranjan, J)**

V.K. Pandey/-

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