

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.18566 of 2016

Arising Out of PS.Case No. -1128 Year- 2014 Thana -GAYA COMPLAINT CASE District- GAYA

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Sudhanshu Kumar Bharti @ Rakesh Yadav, S/o Chandradeo Yadav
resident of village - Charwara, P.S. Atari, District - Gaya

.... Petitioner

Versus

1. The State of Bihar
2. Reena Devi W/o Late Manoj Yadav Resident of Mohalla - Kapil Dhara,
Maranpur, P.S. Civil Lines, District - Gaya

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Ravindra Kumar Sinha, Advocate
For the State : Mr. Pranav Kumar, A.P.P.
For the complainant : Mr. Surendra Kumar Singh, Advocate

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN
ORAL ORDER

2 10-05-2016 Heard learned counsel for the petitioner, the State and the
complainant.

The petitioner apprehends his arrest in a case registered
for the offence punishable under Sections 406, 420, 323 and 504
of the Indian Penal Code.

It is contended on behalf of the petitioner that it is
apparent from the allegation made in the complaint petition itself
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
alleged that the complainant had given Rs.2,50,000/- to the
petitioner for the purpose of securing job and he has not returned

the money.

It is contended on behalf of the petitioner that service is not a commodity which can be purchased by payment of money rather it can only be obtained on the basis of merit, therefore, that allegation is baseless and fact is that the complainant wanted to marry the petitioner and when she could not succeed then such type of allegation has been made against him. It is urged that the court below has not taken cognizance under Section 376 of the Indian Penal Code.

Learned counsel for the informant submits that the complainant was misled by the petitioner and he had established physical relationship with her, therefore, the offence under Section 376 IPC is made out against the petitioner.

Per contra, it is contended on behalf of the petitioner that if consent for sexual intercourse on promise having been made for marriage 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, Sudhanshu Kumar Bharti @ Rakesh Yadav 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 Complaint Case No.1128 of 2014, on furnishing bail bond of Rs.10,000 (Ten Thousand Rupees) with two sureties of the like amount each to the satisfaction of Chief Judicial Magistrate, Gaya 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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