

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.45816 of 2017

Arising Out of PS.Case No. -228 Year- 2017 Thana -PIRBAHOR District- PATNA

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MD. FAIZAN AHMAD @ FAIZAN AHMAD, Son of Shakeel Ahmad,
aged about 28 years, Resident of Sabzibagh, P.S.- PIRBAHORE, District- Patna.

.... Petitioner/s

Versus

The State of Bihar.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Shama Sinha

For the Informant : Mr. Saket Anand, Adv.

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL ORDER

2 20-09-2017 Heard the learned counsel for the petitioner and the

learned counsel for the informant.

The petitioner seeks regular bail in connection with
Pirbhor P.S. Case No. 228 of 2017 for the offences punishable
under Sections 376, 312, 313, 504/34 of the Indian Penal Code.

The accusation of the informant against the petitioner
is that she was being sexually abused on the pretext of promise of
marriage by the petitioner herein since three years and she had
also become pregnant, however, her pregnancy was terminated
thrice. It has further been stated by the informant that the
petitioner had promised to marry her and now, he has refused to
marry.

The learned counsel for the petitioner submits that
the informant in her statement under Section 164 Cr.P.C. has not
alleged any offence as complained of in the F.I.R. and merely it
has been submitted that she wants to marry the petitioner who was



not ready to marry her earlier and now he is ready to do so. It has further been submitted that the informant has stated in her statement under Section 165 Cr. P.C. that there was love affairs between her and the petitioner herein as well as there were physical relationship between them, however, there is no whisper of any sexual abuse or exploitation so as to prima facie make out a case u/s 376/312/313/504 of the I.P.C.

The learned counsel for the informant has vehemently opposed the prayer for bail and has submitted that the informant has been sexually abused by the petitioner and used as a sex doll on the pretext of promising to marry her.

I have perused the materials and have heard the parties. It is clear from the statement of the informant under section 164 Cr. P.C. that the informant was knowing the petitioner since 3 years, there was a love affair between them and they had sexual relationship. However, the informant, in her section 164 Cr. P.C. statement made before the ACJM X, Patna has neither levelled any allegation whatsoever against the petitioner nor alleged that she was being used as a sex doll by the petitioner.

It is a trite law that consensual intercourse between two adult persons, even upon a promise to marry, would not constitute rape specially if such relationship is out of deep love for each other and continuing for a long period of time. The cause of action for breach of promise may lie before a competent court



having civil jurisdiction.

However, without adverting to the merits of the case, which may effect rights of the respective parties, but keeping in view the statement of the informant recorded u/s 164 Cr. P.C. as also the fact that the petitioner has a clean antecedent and he is in custody since 17.5.2017, I deem it fit and proper to enlarge the petitioner, above named, on regular bail on furnishing bail bonds of Rs. 10,000/- with two sureties of the like amount each to the satisfaction of learned Chief Judicial Magistrate, Patna in connection with Pirbhor P.S. Case No. 228 of 2017.

It is further directed that the petitioner shall appear before the learned trial court on each and every date and on his failure to appear before the learned trial court on two consecutive dates, the privilege of regular bail granted to the petitioner would stand withdrawn, the bail bond of the petitioner would be cancelled and he would be taken into custody forthwith.

(Mohit Kumar Shah, J)

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