

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.42064 of 2019

Arising Out of PS. Case No.-117 Year-2018 Thana- MAHILA P.S. District- Araria

MAULVI IMAMUDDIN Son of Irshad Resident of Village - Joginder, Ward No.11, P.S.- Mahalgaon, Dist.- Araria.

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR
2. Guljasta Khatoon D/o Md. Isha Resident of Village - Joginder, P.S.- Mahalgaon, Dist.- Araria.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Anamul Haque

For the Opposite Party/s : Mr. Nitya Nand Tiwary

CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN
ORAL ORDER

2 11-07-2019 Heard learned counsel for the petitioner and learned APP for the State.

2. The petitioner apprehends his arrest for the offences alleged under Sections 376, 313/34 IPC and Section 3 and 4 of the POCSO Act registered in connection with Araria Mahila P.S. Case No. 117 of 2018.

3. It is submitted that the petitioner has been falsely implicated on the accusation that he established physical relationship with the informant on the pretext of marriage, later on he resiled from his promise. It is submitted that there is inordinate delay in institution of the FIR on 14.12.2018 allegedly for the first occurrence on 22.06.2018. The parties are neighbours and the informant is residing on the land provided by the petitioner which she was asked to vacate and instead, the informant lodged the FIR in order to create pressure upon the petitioner. The doctor has opined that the victim girl is aged about 18-20 years. It is therefore, submitted that the provisions of POCSO Act are not applicable. The petitioner claims clean antecedents.

4. Learned APP appears and opposes the petition inviting reference to a recent decision of the Hon'ble Supreme Court in *Anurag*



Soni vs. The State of Chattisgarh, AIR Weekly 2019 SC 1857, to submit that there was no valid consent of the informant which had been obtained on misconception of fact as mentioned in Section 90 of the IPC.

5. Be that as it may and considering that the facts in *Anurag Soni's* case (supra) are distinguishable from the facts of the present case inasmuch as it does not appear from the FIR that there is any material to indicate the petitioner's intention from the very inception not to marry the informant, in the event of the petitioner's arrest or surrender before the court below within six weeks from the date of communication of this order, let the above named petitioner be released on bail on furnishing bail bond of Rs.10,000/- (ten thousand) with two sureties of like amount each to the satisfaction of learned Ist Additional Sessions Judge-cum-Special Judge, Araria, in connection with Araria Mahila P.S. Case No. 117 of 2018 subject to the conditions as laid down under Section 438 (2) Cr.P.C. and also subject to the following further conditions:

- i. That one of the bailors shall be a close relative of the petitioner.
- ii. That the petitioner shall not indulge in any similar offence till conclusion of the trial.
- iii. That the petitioner shall co-operate with the investigation, if not already concluded, and make himself available as and when so required and in case of failure, the State shall be at liberty to move for cancellation of bail.
- iv. The petitioner shall remain physically present in Court on each and every date during trial and in the event of failure on two consecutive dates without sufficient reason, his bail bond shall be liable to be cancelled by the learned Court concerned.

(Vikash Jain, J)

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