

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.42501 of 2019

Arising Out of PS. Case No.-45 Year-2017 Thana- MAHILA P.S. District- Samastipur

KRISN KUMAR JHA @ KRISHAN KUMAR JHA Son of Arun Kumar Jha
Resident of Village - Basuara, P.S.- Moro, P.O.- Araila, District- Darbhanga

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Anurag Singh
		Mr. Shashank Shekhar
For the Opposite Party/s	:	Mr. Bal Mukund Prasad Sinha

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 Section 376 of the Indian Penal Code registered in connection with Women P.S. Samastipur Case No. 45 of 2017.

3. It is submitted that the petitioner has been falsely implicated on the accusation that he established physical relationship with the informant four months earlier on the pretext of marriage, but later on he resiled from his promise. It is submitted that there is inordinate delay in institution of the FIR on 17.12.2017 since the first occurrence. The victim girl in her statement recorded under Section 164 Cr. P.C. has stated her age to be of 19 years. It is therefore, submitted that the relationship was consensual in nature which did not attract the ingredients of Section 376 IPC. 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 Indian Penal Code.

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 ACJM II, Samastipur in connection with Women P.S. Samastipur Case No. 45 of 2017, 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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