

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL MISCELLANEOUS No.3713 of 2019**

Arising Out of PS. Case No.-47 Year-2018 Thana- JOKIHAT District- Araria

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Nirmal Kumar Bishwas, s/o Upendra Bishwas, Resident of Village Madhaili  
P.S. Mahalgaon, District- Araria.

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

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**Appearance :**

For the Petitioner/s : Mr.Abhijeet Gautam

For the Opposite Party/s : Mr.Shyam Bihari Singh

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**CORAM: HONOURABLE MR. JUSTICE S. KUMAR**

ORAL ORDER

4      06-03-2019                      I have heard learned counsel for the petitioner and  
  
the State.

The petitioner apprehends his arrest in a case registered for offences punishable under Sections 376, 120B of the Indian Penal Code read with Section 3/4 of the POCSO Act

Informant is victim girl who in her written complaint has alleged that petitioner one year before, committed rape upon her while she was alone and when she wanted to raise alarm, she was threatened and petitioner assured that he will solemnize marriage with her and, thereafter, continued physical relation with her on promise of getting married to her. However, when she became pregnant, he pressurized her to get the pregnancy terminated for which she did not agree and when she contacted the parents of petitioner, they abused and assaulted



her. Even in Panchayati, they were insulted and abused. On the basis of such complaint, F.I.R. was instituted under Sections 376 read with Section 120B of IPC and Section 34 of POCSO Act.

In her statement recorded under Section 164 Cr.P.C., she has stated that petitioner is her neighbour and he promised her that he will marry her and on pretext of marriage, he established physical relation with her and also raped her and continued such relation for last one year and when she became pregnant, he is not ready to marry her. There was Panchayati also but he did not agree and asked her to get pregnancy aborted.

It has been submitted on behalf of the petitioner that he is innocent and has been falsely implicated in this case. According to medical report, age of the victim girl has been assessed to be 17 to 18 years and also she was pregnant. It has further been submitted that even assuming the allegations levelled by the informant to be true, the relations were consensual as according to the victim, it continued for last one year. It has been submitted that on offence of rape is made out as petitioner did nothing against her will or without the consent of the informant. The allegations by the informant after she became pregnant that petitioner refused to marry her cannot



constitute any criminal offence.

Having regard to the facts and circumstances of the case, let the petitioner abovenamed be released on bail in the event of arrest/surrender before the court below within a period of six weeks from today in Spl. (POCSO) Case No.07/18 arising out of Jokihat (Mahalgaon) P.S. Case No. 47/18, on furnishing bail bond of Rs.10,000 (Ten Thousand Rupees) each with two sureties of the like amount each to the satisfaction of 1<sup>st</sup> Addl. Sessions Judge, Araria subject to the conditions as laid down under sub-section(2) of Section 438 of the Code of Criminal Procedure and also with following conditions:-

(1) Bailors should be local having sufficient immovable property within the jurisdiction of the court concerned.

(2) Petitioner shall co-operate in the trial and shall be properly represented on each and every date fixed by the court and shall remain physically present as directed by the Court and his absence on two consecutive dates without sufficient reason, his bail bond shall be cancelled by the court below.

(3) If the petitioner tampers with the



evidence or the witnesses of the case, in that case, prosecution will be at liberty to move for cancellation of bail of the petitioner.

**(S. Kumar, J)**

Sanjay/-

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