

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.66446 of 2019

Arising Out of PS. Case No.-65 Year-2019 Thana- MAHILA P.S. District- Patna

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ALOK TIWARI @ ALOK Son of Bipin Bihari Tiwari Resident of Harbilaga,
P.S.- Nautan, Distt - Siwan at present R/o Qtr. No. N 19/10, Renu Sagar
Colony, Anpara, P.S.- Anpara, Distt - Sonbhadra (Uttar Pradesh)

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Amresh Kumar Sinha

For the Opposite Party/s : Mr.Ajit Kumar

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN
ORAL ORDER

2 05-11-2019 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, 420 of the Indian Penal Code and Section 4 of the D.P. Act registered in connection with Mahila P.S. Case No. 65 of 2019.

3. It is submitted that the petitioner has been falsely implicated on the accusation that he established physical relationship with the informant for about an year on the pretext of marriage, but later on he resiled from his promise. It is submitted that admittedly the physical relationship was consensual and lasted for about an year before the petitioner is said to have resiled from his promise. It is therefore, submitted that the ingredients of Section 376 IPC are not attracted. 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, which is one of the essential ingredients as held in the case of *Pramod Suryabhan Pawar vs. State of Maharashtra*, 2019 SCC online SC 1073, 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 Smt. Madhavi Singh. J.M. Ist Class, Patna in connection with Mahila P.S. Case No. 65 of 2019, 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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