

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.24391 of 2020

Arising Out of PS. Case No.-88 Year-2018 Thana- KURSAKANTA District- Araria

Md. Afzal, aged 22 yrs {M}, son of Md. Zafir @ Jafir Khan, Resident of village - Sundari, Ward No. 09, P.S. - Kursakanta, Dist. - Araria.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Ramesh Kumar Singh

For the Opposite Party/s : Mr. Nawal Kishore Prasad

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

4 15-12-2020 Heard Mr. Ramesh Kumar Singh, learned counsel for the petitioner and Mr. Nawal Kishore Prasad, learned counsel for the State through video conferencing.

Petitioner apprehends his arrest in connection with Kursakanta P.S. Case No. 88 of 2018 registered for the offence under Section 341 / 323 / 376 / 504 / 34 of the IPC.

The allegation as per the First Information Report is that the petitioner established sexual relationship with the informant on the basis of the promise to marry the informant and on 27.04.2018 in the night the petitioner took the informant into the maize field and had sexual intercourse with her.

Learned counsel for the petitioner submits that petitioner has falsely been implicated in this case inasmuch informant is major and it was a case of consensual relationship



between the petitioner and the informant. Learned counsel further submits that there is contradiction in the statement of the victim in the First Information Report and the statement recorded under Section 164 of the Cr.P.C. In the First Information Report the victim is saying that she was having intercourse with the petitioner in the maize field whereas in her statement recorded under Section 164 she has stated that she was raped by the petitioner in the maize field and upon noise made by the informant her mother and maternal uncle arrived at the place of occurrence and the mother and maternal uncle of the informant have not supported the statement of the victim girl recorded under Section 164 of the Cr.P.C. Learned counsel further submits that medical examination of the victim girl was conducted by the medical board but no sign of fresh sexual assault have been found by the medical board.

On the other hand, learned counsel for the State referring to the case diary and statement of the victim girl recorded under Section 164 Cr.P.C. submits that the victim girl has categorically stated that the petitioner induced the victim girl on false promise of performing marriage with her and established sexual relationship for the last six months and on 27.04.2018 rape was committed upon the informant by the



petitioner which the informant has specifically stated in her statement recorded 164 Cr.P.C. and other witnesses including the mother of the informant has supported the prosecution case and from the very beginning the intention of the petitioner was not to marry with the informant and in view of Section 90 of the I.P.C. if consent of a person is obtained on the basis of misconception of fact, that amounts to no consent in the eyes of law.

After having heard learned counsel for the parties and taking into consideration materials available on record, I am not inclined to grant anticipatory bail to the petitioner

Accordingly, the same is rejected.

It goes without saying that if the petitioner surrenders and moves regular bail before the court below it may be considered by the court below on its merit without being prejudiced to the fact that the present anticipatory bail petition has been rejected by this court.

(Anil Kumar Sinha, J)

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