

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.23810 of 2020

Arising Out of PS. Case No.-72 Year-2019 Thana- MAHILA P.S District- Supaul

Mustafa Alam @ Chotan @ Md. Mustafa, aged about 21 years, Male, Son of Rakib Khan, resident of Village - Thadhi Bhabanipur, Police Station- Pipra, District - Supaul

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Arun

For the Opposite Party/s : Mr. Murlidhar

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

4 11-11-2020 Heard Mr. Arun, learned counsel for the petitioner and Mr. Murlidhar, learned A.P.P. appearing for the State through video conferencing.

Petitioner seeks regular bail in connection with Supaul Mahila P.S. Case No. 72 of 2019 registered for the offence under Section 341, 342, 448, 376, 354B, 354D, 323, 504, 506, 509 / 34 of the I.P.C. and Section 3 / 4 of the Dowry Prohibition Act.

The allegation as per the First Information Report is that on 13.12.2019 the case has been lodged by the maternal grand-mother of the victim girl alleging therein that the petitioner along with other accused persons had made viral the objectionable photos of the maternal grand-daughter of the informant. It has further been alleged that upon query, the victim girl stated that about 2-3 months back the petitioner had taken



her to his old house and committed rape with her and took objectionable photos. It has further been alleged that petitioner used to establish physical relationship on the promise to marry her and also after showing the alleged objectionable photos to the victim girl.

Mr. Arun, learned counsel for petitioner submits that petitioner has not committed any offence in the manner alleged and from perusal of the First Information Report it would be evident that there was love affair between the petitioner and the victim girl and marriage could not be solemnized as allegedly the side of the petitioner and other accused persons demanded dowry of Rs. 2 Lakhs for the purpose of marriage. Learned counsel further submits that from perusal of the statement of the victim girl recorded under Section 164 of the Cr.P.C. it would be evident that the victim girl was having consensual relationship with the petitioner. Learned counsel also submits that medical report is not supporting the prosecution story and there was no sign of rape upon the victim girl and the case has been lodged after a delay of about 26 days.

On the other hand, learned counsel for the State submits that from perusal of the F.I.R. it would be evident that petitioner committed rape upon the victim girl and took



objectionable photographs of the victim and thereafter continued to establish physical relationship with the victim girl on the false promise of marriage and also threatened the victim that her photograph would be made viral. Learned counsel referring to the case diary and the statement of the victim girl recorded under Section 164 of the Cr.P.C. submits that the petitioner committed rape and established physical relationship with the victim girl on the false promise that he would marry her. It has also been submitted that from the very inception the petitioner was not having any intention to marry the victim girl and consent, if any, of the victim girl taken by the petitioner was not a consent in the eye of law and is covered by mischief of Section 90 of the I.P.C. Learned counsel further submits that consent based upon misconception of fact is not a consent and in case a victim engages herself in sexual relationship on false promise of marriage, such consent is not a valid consent and the sexual relationship on the basis of invalid consent amounts to rape.

Having heard learned counsel for the parties and taking into consideration the materials available on record and the statement of the victim girl recorded under Section 164 of the Cr.P.C., I am not inclined to grant regular bail to the



petitioner at this stage.

Accordingly, the same is rejected.

However, the petitioner may renew his prayer for regular bail after one year, if the trial does not show any progress.

(Anil Kumar Sinha, J)

praful/-

U		T	
---	--	---	--

