

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.24142 of 2020

Arising Out of PS. Case No.-216 Year-2018 Thana- KURSAKANTA District- Araria

Md. Ismil @ Md. Ismail, aged about 24 years, male, S/o late Sufi @ Sofi R/o village - Lailokhar Garaiya, Ward No. 12, P.S.- Kursakanta (Kuwari), District- Araria.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Bishwajeet Singh
For the Opposite Party/s : Mr. Dashrath Mehta, APP

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

4 25-11-2020 Heard Mr. Bishwajeet Singh, learned counsel for petitioner and Mr. Dashrath Mehta, learned counsel for the State through video conferencing..

Petitioner seeks regular bail in connection with Spl (POCSO) Case No. 50 of 2018 arising out of Kursakanta (Kuwari) P.S. Case No. 216 of 2018 registered for the offence under Section 376 , 313 , 504, 34 of the I.P.C. and Section 4 / 6 of the POCSO Act.

The allegation as per the First Information Report is that while the victim was sleeping, the petitioner entered into her house and committed rape upon her and on protest, he threatened to kill and further assured to marry the informant and on the basis of that assurance the petitioner continued to establish sexual relationship with the victim / informant, due to which she became pregnant and when the victim insisted for marriage, the petitioner refused to marry her and the informant was administered medicine due to which her pregnancy was aborted.



Learned counsel for the petitioner submits that petitioner has falsely been implicated in this case due to land dispute. Learned counsel further submits that the victim has declared her age in the First Information Report as 13 years, but she was medically examined in which the age of the victim has been assessed as 18 years. Learned counsel further submits that in the medical examination no evidence of fresh sexual assault upon the victim has been found.

On the other hand, learned counsel for the State submits that there is specific allegation against the petitioner that the petitioner at the first instance committed rape upon the informant and upon protest by the informant, he gave assurance that he would marry the informant and on that false pretext he continued to establish sexual relationship with the informant. Learned counsel further submits that from the very inception it would be evident that the intention of the petitioner was not to marry the informant and on the basis of misconception of fact the informant / victim established sexual relationship with the petitioner for a fairly long time for eight months and as per Section 90 of the I.P.C. consent, if any, obtained on the basis of misconception of fact is not a consent in the eyes of law. Learned counsel further submits that the statement of the victim



girl was also recorded under Section 164 of the Cr.P.C. in which the learned Magistrate has assessed the age of victim as 15 years and she has fully supported the prosecution case in her statement recorded under Section 164 of the Cr.P.C. Learned counsel for the State further submits that in case a woman engaging in sexual relation on false promise of marriage, her consent is based on misconception of fact and such sexual assault will amount to rape.

Having heard learned counsel for the parties and taking into consideration the materials available on record in totality 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.

praful/-

(Anil Kumar Sinha, J)

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