

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.4984 of 2019

Arising Out of PS. Case No.-528 Year-2018 Thana- BAHERA District- Darbhanga

Kancheiya Kumar, Son of Radha Sahu @ Radhe Sahu, Resident of Village -
Bahera, P.S. - Bahera, District - Darbhanga.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Kedar Jha

For the Respondent/s : Mrs.Usha Kumari 1

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

3 08-01-2020 Heard learned counsel for the appellant and

learned Spl. P.P. for the State.

The appellant in the present case is seeking setting aside of the impugned order dated 25.07.2019 passed by learned 1st Additional Sessions Judge-cum-Special Judge, SC/ST Act, Darbhanga in A.B.P. No.1159 of 2019 whereby and whereunder the learned court below has been pleased to refuse to grant anticipatory bail to the appellant who has been made accused in Bahera P.S. Case No.528/2018 (G.R.No.247/2018) registered for the offence punishable under Sections 376, 341, 323 and 504/34 of the Indian Penal Code and Sections 3(1)(r)/3[1](s) of the Scheduled Caste and Scheduled Tribe (Prevention of



Atrocities) Act, 1989.

Learned counsel for the appellant submits that as per the prosecution story the informant is a member of the scheduled caste and she was allured by this petitioner to establish physical relationship on the pretext of marrying her. The informant alleged that for about four months, the petitioner had been establishing relationship and on 29.11.2018 when he came to the house of the informant he promised her to take to the court for marriage purpose but on the very next day when the informant went to the house of the petitioner, she was abused by father and wife of elder brother of this petitioner in the name of her caste and the informant as well as her mother were abused and beaten which have been seen by the co-villagers.

Learned counsel for the appellant has strenuously argued that on the face of the allegations it is to be taken as a case of 'consent' on the part of the informant and there being a consent on her part it cannot be said to be a case covered under Section 376 I.P.C. In this connection, he has also relied upon the judgments of the Hon'ble Supreme Court in the case of **Dr. Dhruvaram Murlidhar**



Sonar Vs. State of Maharashtra and Ors. reported in **2018 SCC Online SC** and **Dr. Pramod Suryabhan Pawar Vs. The State of Maharashtra** reported in **AIR 2019 SC 4010** as also on the order dated 17.02.2016 passed by a learned coordinate Bench of this Court at the relevant time in Cr.Misc. No.124 of 2016. In Cr.Misc. No.124/2016, anticipatory bail was granted to the petitioner taking note of the facts and circumstances of the said case in which the Court noticed the submission of the parties, the period of relationship and then allowed the privilege of anticipatory bail to the said accused. Learned counsel further submits that now the appellant and the informant have compromised their dispute and they have filed petition in this regard in the court below.

Learned APP for the State has opposed the prayer for anticipatory bail of the appellant. It is his submission that there are serious allegations of establishing physical relationship with the informant on the pretext of marriage and it appears from the allegations made that at the very inception the appellant had allured the informant on the pretext of the marriage. Pointing out to the facts of



the case which went to the Hon'ble Supreme Court and on which reliance has been placed by learned counsel for the petitioner, learned APP submits that the facts of the present case are quite different and distinct from those cases. In the case before the Hon'ble Supreme Court there were clinching materials to establish that the parties were in contact with each other for several years and they had been establishing physical relationship despite there being knowledge on the part of the girl that the marriage with the boy was difficult because they belonged to different castes, therefore, the Hon'ble Supreme Court was of the view that for the girl perhaps marriage was not the immediate concern and relevance for purpose of giving consent to establish the physical relationship. Such is not the case here.

Considering the facts and circumstances of the case as also on a careful perusal of the judgments of the Hon'ble Supreme Court, this Court finds that the cases before the Hon'ble Supreme Court has gone after the Hon'ble High Court dismissed the petition under Section 482 Cr.P.C. for quashing of the FIR and the criminal proceeding. Certain materials were there before the Hon'ble



Apex Court which have been referred therein and taking note of the undisputed facts showing that the parties were having relationship for a quite long time and they were even living together for some time the FIRs were quashed.

So far as the present case is concerned, the matter is still under investigation and overall facts and circumstances of the case do not show at this stage that the informant had been giving consent to establish physical relationship for a quite long time and/or any belief that the marriage is not relevant for her.

The Hon'ble Supreme Court in the case of Dr. **Dhruvaram Murlidhar Sonar** (supra) while referring another judgment of Hon'ble Supreme Court in the case of Uday Vs. State of Karnataka (2003) 4 SCC 46 quoted paragraph 21 thereof which inter alia contains the following observations:-

“21. In the ultimate analysis, the tests laid down by the courts provide at best guidance to the judicial mind while considering a question of consent, but the court must, in each case, consider the evidence before it and the surrounding circumstances, before reaching a conclusion, because each case has its own peculiar facts which may have a bearing on the question whether the consent was voluntary, or was given under a misconception of fact. It must also weigh the evidence keeping in view the fact that the burden



is on the prosecution to prove each and every ingredient of the offence, absence of consent being one of them.”

In the totality of the facts and circumstances of the case, as noticed above, where there are specific allegations against the petitioner of alluring and entering into physical relationship with the informant in the name of marriage, this Court is not inclined to grant privilege of anticipatory bail to the appellant. This appeal is dismissed.

In case, the appellant surrenders and prays for regular bail in the court below within a period of four weeks from today, his prayer for regular bail shall be considered on its own merit without being prejudiced by the order of this Court.

(Rajeev Ranjan Prasad, J)

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