

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.16916 of 2021**

Arising Out of PS. Case No.-359 Year-2019 Thana- SUGAULI District- East Champaran

MD. TABREJ ALAM @ TABREJ ALAM SON OF SHEIKH ISHU @ SK
ISHU R/O VILLAGE- MANSINGHA, P.S.- SUGAULI, DISTRICT- EAST
CHAMPARAN.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Sashank Shekhar, Advocate
For the Opposite Party/s	:	Mr. Mritunjaya Kumar Gautam, APP.
For the Informant	:	Mr. Samir Kumar, Advocate

**CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL ORDER**

4 16-09-2021 Heard learned counsel for the parties through video conferencing.

The petitioner has preferred this application for grant of regular bail in a case registered under section 376 and other sections of the Indian Penal Code.

As per the prosecution case, it is stated by the informant that on the pretext of marriage, the petitioner entered into physical relations with the informant. She got into family way. The petitioner used to get her to abort the child. It is stated that on 22.8.2019, while he was insisting on her to elope with him, she was seen by her uncle. Subsequently, he started to threaten. Hearing the hulla, on other persons gathering there, the petitioner managed to escape.

It is submitted by learned counsel for the petitioner that the allegations as levelled in the FIR are false and concocted. It is submitted that from the contents of the FIR, no offence under section 376 of the Indian Penal Code is made out.



Learned counsel for the petitioner further refers to the statement of the informant recorded under section 164 Cr.PC wherein she states that she was in love with the petitioner and wanted to marry him and it is for this reason that she entered into physical relations with him. But he does not want marry. It is thus submitted that any vagueness in the contents of the FIR is clear from reading of the statement under section 164 Cr.P.C from which it would be evident that the physical relations between the parties who are both major was consensual. The petitioner is in custody since 28.1.2020 and has no criminal antecedent. Charge sheet has been submitted in the case. In support of his contentions learned counsel for the petitioner relies on the judgments reported in (1982) 2 SCC 202, (2018) 9 SCC 248 and the judgment dated 1.3.2021 of the Hon'ble Supreme Court passed in Cr. Appeal no. 233 of 2021 arising out of SLP (Cr.) no. 11218 of 2019 (Sonu @ Subhash Kumar vs. the State of Utter Pradesh & Anr.).

The application for bail is opposed by learned APP for the State and learned counsel for the informant. Learned counsel for the informant submits that from reading of both the FIR as also statement under section 164 Cr.P.C it is clear that from the very inception the petitioner had no intention of marriage and thus the offence under section 376 of the Indian Penal Code is made out. In support of his contention he relies on the judgments in case of (2013) 16 SCC 651, (2019) 13 SCC 1 and (2013) 7 SCC 675.

Having heard learned counsel for the parties and taking into consideration the materials on record specially the contents of the statement under section 164 Cr.P.C, the Court finds weight in the submissions made on behalf of the petitioner. The



application is allowed. The petitioner is directed to be enlarged on bail in connection with Sugauli P.S. Case no. 359 of 2019 on furnishing bail bond of Rs.10,000/- (Rupees Ten Thousand) with two sureties of the like amount each to the satisfaction of the learned Chief Judicial Magistrate, East Champaran.

(Partha Sarthy, J)

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