

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.32252 of 2020

Arising Out of PS. Case No.-33 Year-2020 Thana- BEN P.S. District- Nalanda

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Ankit Raj, Male, aged about 24 year, S/o Shri Ganga Bishun Yadav @ Ganga Bishun Prasad, R/o Village- Bhaur Bigha, P.S.- Noorsarai, District- Nalanda.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Rajendra Narain, Sr. Advocate with Mr. Raj Kishor Prasad, Advocate
For the State	:	Mr. Anil Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 20-01-2021

Heard Mr. Rajendra Narain, learned senior counsel along with Mr. Raj Kishor Prasad, learned counsel for the petitioner and Mr. Anil Kumar, learned Additional Public Prosecutor (hereinafter referred to as the ‘APP’) for the State.

2. The petitioner is in custody in connection with Ben PS Case No. 33 of 2020 dated 26.02.2020 (G.R. No. 1013 of 2020), instituted under Section 376 of the Indian Penal Code.

3. The allegation against the petitioner is that he had physical relationship with the informant on the pretext that he would marry her but later he refused to do so.

4. Learned counsel for the petitioner submitted that from the FIR itself, it is clear that if at all there was a relationship, it was consensual. Learned counsel submitted that in her statement



to the Court under Section 164 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Code') she has stated that she had gone to Biharsharif with her mother where the petitioner had come and then alone with the petitioner she had gone to some hotel where also it is alleged that the petitioner had intercourse, it cannot be believed that a mother would leave and allow her young daughter to go alone with somebody. Learned counsel drew the attention of the Court to Annexure-3, which is copy of a petition filed by the informant before the Chief Judicial Magistrate, Nalanda in the present case, in which she has negated the allegations which have been levelled in the FIR and has also stated that she does not want to pursue the case and has expressed her desire that the petitioner be released on bail. Learned counsel submitted that no element of rape is made out against the petitioner and he has been falsely implicated as the family members of the informant wanted him to marry her and upon refusal this false case has been filed. It was submitted that the petitioner is in custody since 27.02.2020.

5. Learned APP submitted that from the FIR and the statement of the girl before the Court it is clear that initially there was rape and later, on the pretext of marriage, the petitioner had continued with physical relationship and after a



long period of almost three years he had refused to do so. It was submitted that filing of a petition before the Court below by the informant negating everything said in the FIR and the statement before the Court under Section 164 of the Code and also expressing the desire not to pursue the case and also consenting for the petitioner to be released on bail is in fact a clear indication that it is a blatant attempt of tampering with evidence and managing the witnesses. It was submitted that at this stage, such petition cannot be relied upon as it is at total variance of the initial FIR which has resulted in the police finding substance in the allegations and also filing charge-sheet against the petitioner and now it would be open to the petitioner to contest the trial.

6. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court is not inclined to enlarge the petitioner on bail, for the present.

7. Accordingly, the application stands dismissed.

(Ahsanuddin Amanullah, J)

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