

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.41149 of 2020

Arising Out of PS. Case No.-117 Year-2020 Thana- BAHADURPUR District- Darbhanga

MD. IRSHAD S/o- Md. Wakeel R/o Village- Asgaon, P.S.- Bahadurpur,
District- Darbhanga.

... .. Petitioner/s

Versus

The State of Bihar Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Nirbhay Prashant, Advocate
For the Opposite Party/s : Mr. Umesh Lal Verma, APP

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL ORDER

4 11-08-2021 Heard Mr. Nirbhay Prashant, learned Advocate
for the petitioner and Mr. Umesh Lal Verma, learned APP
for the State.

The petitioner seeks bail in anticipation of his arrest in connection with Bahadurpur P.S. Case No. 117 of 2020 dated 03.03.2020 instituted for the offences under Sections 366, 379, 376, 323 and 504 of the Indian Penal Code.

It has been alleged against the petitioner that he has subjected the prosecutrix to sexual intercourse and after living with her for a long time, has abandoned her.

Learned counsel for the petitioner has submitted that the accusation is absolutely false in as much as no details have been provided by the



prosecutrix regarding the compulsion under which she went to Punjab along with the petitioner to stay with him as his wife.

Apart from this, it has been submitted that in her statement under Section 164 Cr.P.C., which she gave after lot of dilly-dallying, she has referred to the petitioner as her brother-in-law. Surprisingly, in the complaint petition, which has given rise to the subject FIR, the petitioner is referred to as a villager.

Learned counsel for the petitioner has also pointed out that without observing the formalities, an order for institution of a regular case has been directed by the learned Magistrate under Section 156 (3) Cr.P.C.

From the investigation papers, the learned counsel for the petitioner has tried to demonstrate that on several occasions, the prosecutrix did not get her statement recorded nor was she willing to get herself medically examined. Every time that the police party went to the matrimonial home of the prosecutrix, she was not to be found there. Later, she got her statement recorded under Section 164 but the contents of such statement is quite at variance with the averments made in the subject FIR.

The main plank of argument of the learned counsel for the petitioner is that assuming but not



admitting that the petitioner lived with the prosecutrix for sometime in Punjab and subjected her to sexual intercourse, it was only consensual and not by force.

Had it not been the case, the prosecutrix would not have continued to stay at Punjab and after such a long time would not have come back to her village home and filed a case at Darbhanga.

Thus for all practical purposes, it has been urged that the accusation appears to be malafide and actuated by ulterior motives.

Considering these aspects of the matter, this Court had granted provisional bail to the petitioner on 22.06.2021 and had called for the case diary.

Perused the 164 statement of the victim.

Regard being had to the accusation made in such statement (164 Cr.P.C.), I am not inclined to allow this petition for anticipatory bail.

Accordingly, the prayer for anticipatory bail is rejected.

The interim order dated 22.06.2021 stands vacated.

However, if the petitioner surrenders before the court below and seeks bail, all the grounds noted above shall be taken into account and an order shall be passed without being prejudiced by the fact that the present



petition on his behalf has not been entertained.

The application stands disposed off with the
aforesaid observations.

(Ashutosh Kumar, J)

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