

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.7131 of 2022**

Arising Out of PS. Case No.-184 Year-2021 Thana- SAMASTIPUR District- Samastipur

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Avinash Mishra @ Abinash Kumar Mishra @ Amar Parashar @ Dilkhush Son
of Shobhakant Mishra R/O Village- Pator, P.S.- Ashok Paper Mill, District-
Darbhanga

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ranjan Kumar, Advocate

For the Opposite Party/s : Mr. Anand Kishore Choudhary, APP

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**CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER**

3 10-10-2022 Heard learned counsel appearing on behalf of the
petitioner and learned counsel appearing on behalf of the State.

Let the defect(s), if any, be removed within a period of
four weeks from today.

The petitioner seeks bail in connection with Samastipur
P.S. Case No. 184 of 2021 registered for the offence under Sections
417, 419, 420, 465, 484, 376, 353 and 506 of the Indian Penal Code
and under Sections 25 (1-B) (a) and 26 of the Arms Act.

The accused/petitioner is named in the F.I.R. and is in
custody since 20.09.2021.

The allegation against the petitioner is to commit rape
upon informant/victim on false pretext of marriage and also
presenting himself as an I.P.S. Officer of 2014 batch, posted as
Commanding Officer in I.B.



Learned counsel appearing on behalf of the petitioner submitted that admittedly, victim/informant was major at the time of occurrence, doing her Ph.D, having all understanding regarding future of her relation and, as such, the allegation cannot be brought within ambit of rape. It is also submitted that petitioner involved in one case of similar nature, where he is on bail. It is further pointed out that the alleged revolver found as air pistol and, as such, Section 27 of the Arms Act is not applicable and moreover same was purchased by informant herself. It is also submitted that the medical report of victim is not suggesting any injury which may suggest that rape was committed upon her. While concluding the argument, it has been submitted that investigation has been completed, for which, charge-sheet has been submitted, as such, there is no chance of tampering with the evidence.

Learned APP, while opposing the prayer of bail, submitted that victim specifically alleged petitioner to established physical relations, as per her statement recorded under Section 164 of the Cr.P.C., on false pretext of marriage. It is further pointed out that petitioner present himself as an I.P.S. Officer, itself evident of the fact that his intention was of cheating and was never intended to be act upon his promise of marriage. It is further submitted that non-finding of injury or any corroborative medical evidence does not lead to conclusion, *ifso facto*, that rape was not committed upon informant/victim, as rape is a legal finding, not medical.



Considering the facts and circumstances as mentioned above, as specific allegation of rape against this petitioner, was raised by victim/informant through her statement recorded under Section 164 of the Cr.P.C., where petitioner conduct appears, *prima facie*, to cheat and not intended to act upon promise of marriage, from very inception, this Court is not inclined to grant bail to the petitioner, at present.

Accordingly, prayer of bail of the petitioner is rejected herewith.

The learned Trial Court is directed to proceed with the matter, by taking it on board, on daily basis, so as trial may conclude within six month.

Superintendent of Police, Samastipur is directed to produced the charge-sheeted witnesses, as and when directed by the learned Trial Court/Special Court, for expeditious disposal of trial, within specified time, as directed above.

(Chandra Shekhar Jha, J)

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