

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.10000 of 2020

Arising Out of PS. Case No.-1957 Year-2018 Thana- BHAGALPUR COMPLAINT CASE
District- Bhagalpur

JITENDRA CHOUDHARY @ JITU, Son of Bhusan Choudhary, Resident of Mohalla- Mohiddinagar, Safrullahchak, Police Station - Babarganj, District- Bhagalpur.

... .. Petitioner

Versus

1. The State of Bihar.
2. Komal Kumari, D/o Mahendra Choudhary, Resident of Mohalla- Sikandarpur, Near Shitla Asthan, Police Station-Ishakchak, District- Bhagalpur.

... .. Opposite Parties

Appearance :

For the Petitioner : Mr. Md. Najmul Hodda, Advocate
For the Opposite Party : Mr. Uday Chand Prasad, APP

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

6 12-04-2022 Heard learned counsel for the parties.

This application for anticipatory bail arises out of Complaint Case No. 1957 of 2018 for the offence punishable under Sections 376 and 420 of the Indian Penal Code.

The Complainant of the present case is the cousin aunt of the petitioner. The present complaint case has been registered by her against the petitioner alleging that on making false promise of marriage, the petitioner established sexual relationship with her and therefore, he has committed rape with the complainant.

Learned counsel for the petitioner submits that from reading of the complaint, it is clear that the



complainant/opposite party no.2 is a major and she had love affair with the petitioner. He also submits that from the complaint petition itself, it is clear that the complainant/opposite party no.2 had left her house on 14.02.2017 and stayed with the petitioner in NOIDA for one and half years i.e. till 22.09.2018 as husband and wife and the complaint has been registered on 20.11.2018 i.e. after a long delay. He further submits that it is consensual relation with the petitioner and the complainant/opposite party no.2 and the relationship was for a long period as is apparent from the complaint petition itself. He next submits that the marriage was never promised by the petitioner and no offence is made out against the petitioner in the facts of the case and moreover, it is a complaint case.

Notice was issued to the complainant/opposite party no.2, which has come back unserved. Thereafter, Dasti notice was ordered to be sent. Since the complainant could not be found at her place, the Dasti notice was served upon lawyer for the complainant/opposite party no.2, who appears for the complainant in the Court below. However, today also, no one appears for the complainant/opposite party no.2. It seems that the complainant/opposite party no.2 has lost interest in the case.

Learned APP for the State has vehemently opposes



the prayer for anticipatory bail by submitting that it is a case of promising marriage and thereafter having sexual relationship with the complainant and the intention of the petitioner right from the very beginning was never to marry the complainant/opposite party no.2, therefore, the consent for sexual relationship is no consent in the eye of law and the petitioner is guilty of committing rape upon the complainant.

Considered the submissions of the parties.

From reading the complaint petition itself, it appears that the complainant/opposite party no.2 and the petitioner had love affair since 2017 and thereafter the complainant left her home and had live in relationship with the petitioner for about one and half years in NOIDA. No case was filed by the parents of the complainant/opposite party no.2 after the complainant / opposite party no.2 left her parents' home and it seems that they had also consented to her live in relationship with the petitioner. When the petitioner refused to marry then the complainant/opposite party no.2 filed the complaint case.

Whether the promise was false from the very inception or not, this can only be examined when the case goes to trial and all the facts come before the Court. At this stage, this Court finds that the complainant is a major, she left her house



and stayed with petitioner in NOIDA for a pretty long time on her own volition and they had consensual relationship.

In the opinion of this Court, no offence is made out against the petitioner in the facts of the case and therefore, this Court is inclined to grant anticipatory bail to the petitioner.

Let the petitioner, above named, in the event of his arrest/surrender within four weeks from today in the Court below, be released on bail on furnishing bail bond of Rs. 10,000/- (Ten Thousand) with two sureties of the like amount each to the satisfaction of the learned A.C.J.M.-IX, Bhagalpur, in connection with Complaint Case No. 1957 of 2018, subject to the conditions as laid down under Section 438(2) of the Code of Criminal Procedure.

The aforesaid findings are made only for the purposes of grant of anticipatory bail to the petitioner and these findings shall not be treated as final finding during the course of trial. If the case goes to trial, it is for the Trial Court to examine the evidences and thereafter come to a finding whether any criminal case is made out against the petitioner or not.

(Sandeep Kumar, J)

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