

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.27643 of 2021

Arising Out of PS. Case No.-138 Year-2020 Thana- MAHILA P.S. District- Patna

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SANTOSH KUMAR, Son of Ganesh Prasad Singh, Resident of Village -
Baksama, P.S.- Mahua, District – Vaishali

... .. Petitioner

Versus

1. The State of Bihar.
2. Geeta Kumari. Daughter of Manoj Kumar. R/o Near Kali Mandir Road,
Malahi Pakri, Kankarbagh, Patna.

... .. Opposite Parties

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Appearance :

For the Petitioner	:	Mr. Amarendra Narayan, Advocate Mr. Vishal Vikram Rana, Advocate Mr. Sanjay Prakash Verma, Advocate Mr. Neerad Parashar, Advocate
For the State	:	Mr. Jharkhandi Upadhyay, APP
for the Opp. Party No.2	:	Mr. M.N. Parbat, Senior Advocate Mr. Praveen Prabhakar, Advocate Mr. V.P. Srivastava, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

5 12-04-2022 Heard learned counsel for the parties.

Learned counsel for the petitioner is permitted to
remove defect(s), as pointed out by the office, if any, within a
period of four weeks from today.

This application for anticipatory bail arises out of
Mahila P.S. Case No.138 of 2020 for the offence punishable
under Sections 376, 420 and 120-B of the Indian Penal Code.

As per the prosecution case, the petitioner and the



informant/opposite party no.2 had a love affair and thereafter talks for marriage started, in the meantime, for about one and half years, they established physical relationship. Somehow, the marriage talks failed and it has been alleged that in course of one and half years, during which the petitioner had relationship with the informant, he had taken Rs. 2.5 lakhs on the pretext of constructing his house but thereafter, on 27.11.2020, he refused to marry with the informant/opposite party no.2 and threatened to commit rape with her and also making the video viral.

Learned counsel for the petitioner submits that from reading of the F.I.R., it is clear that the opposite party no.2 is a major and she had love affair with the petitioner. He further submits that it is a consensual relation with the petitioner and the relationship was for a long period as is apparent from the F.I.R. 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.

Learned counsel for the petitioner has relied upon the decision of the Supreme Court rendered in the case of ***Sonu @ Subhash Kumar vs. State of Uttar Pradesh*** reported in **2021 (3) BLJ, S.C. 171** and has submitted that his case is squarely covered by the aforesaid decision of the Supreme Court.



Learned senior counsel for the opposite party no.2 has vehemently opposed the prayer for anticipatory bail of the petitioner by submitting that it is a case of promising marriage and thereafter having sexual relationship with the informant/opposite party no.2 and the intention of the petitioner right from the very beginning was never to marry the informant/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 informant/opposite party no.2.

Learned APP for the State also appears and opposes the prayer for anticipatory bail of the petitioner.

Considered the submissions of the parties.

From reading the F.I.R., it appears that initially there was no talk of marriage and only when the petitioner and informant/ opposite party no.2 developed physical relationship, the marriage talks began between the parties. So, it is an admitted fact that there was no promise of marriage before the parties entered into a consensual relationship. The other allegations of demand of dowry and threat are ornamental.

Whether the promise was false from the very inception or not, can only be examined when the case goes to



trial and all the facts come before the Trial Court. At this stage, this Court finds that the informant/ opposite party no.2 is a major and the petitioner and opposite party no.2 had consensual relationship for a pretty long time.

In the opinion of this Court, no offence is made out against the petitioner in the facts of the case.

Considering the aforesaid facts and the law laid down by the Supreme Court in the case of ***Sonu @ Subhash Kumar vs. State of Uttar Pradesh (supra)***, 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 Judicial Magistrate, 1st Class, Patna, in connection with Mahila P.S. Case No. 138 of 2020, 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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