

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.18470 of 2022

Arising Out of PS. Case No.-105 Year-2021 Thana- MITHANPURA District- Muzaffarpur

MD SHAHANSHAH @ BABU SAHEB Son of Late Md. Lal Babu, Resident
of Village- Tinkothiya, Police Station- Mithanpura, District- Muzaffarpur.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Nilendu Kumar Choudhary, Advocate

For the Opposite Party/s : Mr. Md. Mushtaque Alam, APP.

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN

ORAL ORDER

3 16-08-2022 Let the defect, if any, be removed within two
weeks from today.

Heard learned counsel for the petitioner and
learned A.P.P. for the State.

The petitioner seeks regular bail in connection with
Mithanpura P.S. Case No. 105 of 2021 lodged under Sections
366, 420, 376 and 379/34 of the Indian Penal Code.

As per the prosecution case, the informant
disclosed that the petitioner used to maintain physical
relation with her and subsequently provided medicine to
abort pregnancy. Subsequently with a view to marry, the
informant went to Bangalore with the petitioner at the house
of his sister where they also used to continue the physical
relation. Subsequently, they returned to Muzaffarpur for

marriage, where the parent of the informant got knowledge that the petitioner and his family are planning to sell the informant for flesh trade, in result on 01.04.2021 the informant was forcefully recovered from the house of the petitioner. The local residence interfered in this matter thereafter their family became ready for marriage. Subsequently, the *Mangani (Chheka)* was taken place on 07.04.2021 and date of marriage was fixed in the month of March, 2022. Subsequently, the specific allegation made in the F.I.R. that the petitioner and his guardian were started denying from this marriage. Thereafter, the present case has been lodged on 24.05.2021.

Learned counsel for the petitioner submits that from the content of the F.I.R. itself, it transpires that the present case is out and out false case, primarily due to the reason that date of marriage was fixed on March, 2022 but the present case has been filed on 24.05.2021 itself, therefore, the present case has automatically falsified. Learned counsel for the petitioner further submits that petitioner has clean antecedent and he is in custody since 05.01.2022 i.e. about 8 months and charge sheet has already been filed in this case. Learned counsel for the petitioner put

his reliance on para 21 and 22 of a Case namely, ***Dr. Dhruvaram Murlidhar Sonar Vs. State of Maharashtra and others, reported in AIR 2019 SC 327.***

In the said case it has been held that:

“..... In the instant case, it is an admitted position that the appellant was serving as a Medical Officer in the Primary Health Centre and the complainant was working as an Assistant Nurse in the same health centre and that she is a widow. It was alleged by her that the appellant informed her that he is a married man and that he has differences with his wife. Admittedly, they belong to different communities. It is also alleged that the accused/appellant needed a month's time to get their marriage registered. The complainant further states that she had fallen in love with the appellant and that she needed a companion as she was a widow. She has specifically stated that "as I was also a widow and I was also in need of a companion, I agreed to his proposal and since then we were having love affair and

accordingly we started residing together. We used to reside sometimes at my home whereas some time at his home." Thus, they were living together, sometimes at her house and sometimes at the residence of the appellant. They were in a relationship with each other for quite some time and enjoyed each other's company. It is also clear that they had been living as such for quite some time together. When she came to know that the appellant had married some other woman, she lodged the complaint. It is not her case that the complainant has forcibly raped her. She had taken a conscious decision after active application of mind to the things that had happened. It is not a case of a passive submission in the face of any psychological pressure exerted and there was a tacit consent and the tacit consent given by her was not the result of a misconception created in her mind. We are of the view that, even if the allegations made in the complaint are taken at their face value and accepted in their entirety, they do not

make out a case against the appellant. We are also of the view that since complainant has failed to prima facie show the commission of rape, the complaint registered under [Section 376\(2\)\(b\)](#) cannot be sustained.

22. *Further, the FIR nowhere spells out any wrong committed by the appellant under [Section 420](#) of the IPC or under Section 3(1)(x) of the SC/[ST Act](#). Therefore, the High Court was not justified in rejecting the petition filed by the appellant under Section 482 of the Cr.P.C.”*

On the query of the Court that whether petitioner is still ready to marry as per the statement of the F.I.R. or not, learned counsel for the petitioner submits that he is in jail since last 8 months and now he is not ready to marry and ready to face the trial.

Learned counsel for the State opposes the prayer for bail of the petitioner and submits that petitioner is not deserve for bail due to the reason that on the promise of marriage, he continued the physical relation with the victim. The victim left her house and went with the petitioner, lastly petitioner and his family were ready to marry, Chheka took

place but prior to the fixed date of marriage, they started denying and in result, the present case has been filed. Therefore, bail may not be granted to the petitioner.

In the present facts and circumstances of the case and the submissions made above, particularly the judgement on which the petitioner has relied, is not applicable because in the said case the victim was Assistant Nurse, who is widow and the accused was a married person and there was a difference with his wife. Here in the present case the victim is neither the widow nor in service but is a simple unmarried girl.

In this view of the matter, I am of the view that the present case is not a fit case in which bail should be granted to the petitioner at this stage. Accordingly, the bail petition of the petitioner is hereby rejected. But he may renew his prayer for bail after framing of charge.

(Dr. Anshuman, J.)

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