

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL MISCELLANEOUS No.22499 of 2022**

Arising Out of PS. Case No.-1 Year-2022 Thana- MAHILA P.S District- West Champaran

ARSHAD ALI SON OF MD. FARUK @ MOHD FAROOQ R/O- VILLAGE-  
BHITAHA, MOTI TOLA, WARD NO 8, P.S.- BAIRIYA DISTRICT- WEST  
CHAMPARAN

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

**Appearance :**

For the Petitioner/s : Mr.Bimlesh Kumar Pandey

For the Opposite Party/s : Mr.Uma Shankar Prasad Singh

**CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH**  
**ORAL ORDER**

3      15-09-2022      The learned counsel for the petitioner is directed to  
remove all the defects pointed out by the Stamp Reporter within  
one month.

Petitioner seeks regular bail in Mahila P.S Case No.  
01 of 2022 registered for the offences punishable under Sections  
420, 376, 313 and 379 of the Indian Penal Code.

The main allegation is that after the death of informant's  
husband the petitioner trapped informant in his love and started  
establishing physical relationship with her on the pretext to  
marry her and he also took the victim to Delhi where he  
continued to establish the said relationship and when the  
informant conceived then by administering some medicine he  
got the pregnancy of the informant terminated without giving  
any knowledge of the effect of the said medicine to her and



finally the petitioner refused to marry the victim and in the said alleged acts petitioner's family members also co-operated him.

The main submissions advanced by learned counsel Sri Bimlesh Kumar Pandey appearing for the petitioner are that the informant is aunt of the petitioner and she is much elder in the age from the petitioner and also having four children from previous husband and the contents of the FIR go to show that the alleged physical relationship was consensual between the petitioner and the informant. If allegation made in the FIR is believed to be true, even then it is settled principle of law that such type of relationship does not fall under the domain of rape and in this regard the Hon'ble Apex Court has laid down relevant principle in the case of Dr. Dhruvaram Murlidhar Sonar Vs The State of Maharashtra and Ors passed in Cr. Appeal No. 1443/2018. Further submission is that the informant is habitual in filing the cases against the petitioner and his family members and she earlier filed Complaint Case no. 1500/2021 against the petitioner and his family members under sections 498A, 406, 120B, 323/34 IPC and section 3/ 4 of D.P. Act and prior to institution of the instant case the mother of the petitioner had filed Complaint case no. 1370/2021 on that basis, FIR was lodged against the prosecution party and thereafter the present



case was lodged as a counter-blast of the petitioner's case. Further submission is that the petitioner has been languishing in jail since 20.1.2022 having clean antecedent.

Sri Uma Shankar Prasad Singh, learned APP appearing for the State has opposed the prayer for bail.

In view of the above submissions and mainly considering the fact that the petitioner's case was lodged by informant after the institution of the case which was lodged by mother of the petitioner as discussed above and at the initial period of establishing the alleged physical relationship the informant appears to be a consensual party to the alleged relationship and also considering the petitioner's custody period and his clean antecedent, a lenient approach can be taken in respect of the petitioner.

Let the petitioner 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 Chief Judicial Magistrate, Bettiah, West Champaran in Mahila P.S Case No. 01 of 2022.

**(Shailendra Singh, J)**

s.hassan/-

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