

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.31672 of 2022

Arising Out of PS. Case No.-62 Year-2022 Thana- KAMTAUL District- Darbhanga

SONU KUMAR S/o Shri Bikau Mandal @ Vikau Mandal Resident of Ward
No. 9, Kamtaul, Dhanuk Tola, P.S. - Kamtaul, Distt. - Darbhanga.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Shambhu Nath Jha, Advocate

For the Opposite Party/s : Mr. Kumar Veerendra Narayan, A.P.P.

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

2 22-11-2022 Heard learned counsel for the petitioner and learned
A.P.P. for the State.

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

The petitioner apprehends his arrest in a case
registered for the offences punishable under Sections 341, 323
and 376/34 of the Indian Penal Code.

Learned counsel for the petitioner submits that
petitioner is a person with clean antecedent.

The informant alleges that she used to study in
petitioner's Care Coaching Centre and in the name of giving
extra tuition, petitioner used to call and teach her at his
residence. Further, for the past three years, the petitioner was
asking her to marry him and on the pretext of marriage,
petitioner established physical relation with the informant. It is



further alleged that when the informant went to the house of the petitioner asking him to marry, she was assaulted and the accused persons including the petitioner refused to marry.

Learned counsel for the petitioner submits that petitioner has been falsely implicated in the present case and from bare perusal of the allegation as alleged in the FIR, it would manifest that informant is major, aged about 21 years. It is further submitted that whatever happened, happened with the consent of the informant without any false promise of marriage. Learned counsel next submits that from tenor of the allegation, it would manifest that the informant and the petitioner were in relationship for a long time as it has been alleged that for the past three years, the petitioner was asking her to marry him. It is also submitted that relationship was consensual and when the same soured, the present false case of rape came to be instituted. Learned counsel further submits that petitioner has his own version and informant has her. It is next submitted that as per the petitioner, the relationship was consensual, the informant on her own volition being a major understanding the consequences of her action had entered into a relationship with the petitioner, the physical intimacy was also consensual, there was no deceit nor consent of the informant was obtained in breach of Section



90 of the Indian Penal Code. Learned counsel also submits that the version of the informant is that on pretext of marriage, the petitioner entered into physical relation with her and later resiled, as such, the consent obtained was not in terms of Section 90 of the Indian Penal Code. Learned counsel, thus, submits that both petitioner and the informant have their own version which still is to be adjudicated in a duly constituted trial and in the event, if the petitioner is sent to jail, at this stage, the same would amount to travesty of justice. In the event, if the petitioner is acquitted of the charges in the trial and if he is sent to jail now, how his period of incarceration would be compensated and in the event, if the petitioner is indicted/convicted in the trial, he will serve the sentence.

Learned counsel next relies on an order passed by the Hon'ble Supreme Court in the case of **Ansaar Mohammad Vs. State of Rajasthan and Anr.** reported in **AIR 2022 SC 3478** and draws the attention of the Court to para 3 of the order which is as follows:-

“In view of the said fact, the complainant has been staying willingly with the appellant and had the relationship. Therefore, now if the relationship is not working out, the same cannot be a ground for lodging an FIR for the offence under Section 376(2)(n) of the Indian Penal Code.”

Learned counsel next submits that the fact of the said



case was also akin to the facts of the present case as in the said case also the complainant was in relationship with the appellant for a period of four years and when the relation was started she was 21 years of age.

Learned A.P.P. for the State opposes the prayer for anticipatory bail of the petitioner but is not able to meet the submission of the learned counsel for the petitioner as aforesaid.

Considering the submissions made by the learned counsel for the petitioner, the petitioner above-named, in the event of his arrest or surrender before the learned Court below within a period of six weeks from today, be released on anticipatory bail on furnishing bail bonds of Rs.10,000/- (Rupees Ten Thousand) with two sureties of the like amount each to the satisfaction of the learned court below where the case is pending/successor court in connection with Kamtaul P.S. Case No. 62 of 2022, G.R. No. 641 of 2022, subject to the conditions as laid down under Section 438 (2) of the Cr.P.C.

(Satyavrat Verma, J)

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