

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.533 of 2022

Arising Out of PS. Case No.-8 Year-2020 Thana- MAHILA PS District- Darbhanga

Md. Irfan, Son Of Md. Nasirul Resident Of Village- Chandi, Police Station-
Bahadurpur, District- Darbhanga.

... .. Petitioner/S

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s :	Mr. Syed Masleh Uddin Ashraf- Advocate
For the Opposite Party/s :	Mr. Sanjay Kumar Singh- A.P.P.
	Mr. Iqbal Asif Niazi- Advocate

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

2 03-08-2022 Heard learned counsel for the petitioner, learned
counsel for the informant and learned APP for the State.

The petitioner seeks bail in anticipation of his arrest in
a case registered for the offences punishable under Sections 376,
323, 504/ 34 of the Indian Penal Code.

The learned counsel for the petitioner submits that
petitioner is a person with clean antecedent and the informant (a
major) alleges that after the death of her father, she was having
problem in leading a peaceful life, as such, she came and started
studying in the house of her sister Nesra Khatoon. It is next
alleged that on 10.10.2018 when her sister and brother-in-law
had gone out for earning wages when Md. Irfan son of Md.
Nasrul entered her house and started misbehaving and when it



was objected, he on the point of knife threatened that he will kill her brother-in-law and thereafter committed rape. It is next alleged that thereafter the informant started weeping, on which the petitioner promised that he will marry her and on pretext of marriage, he continued with sexual relation. It is next alleged that whenever the informant used to ask the petitioner for marrying, he used to avoid the informant, on which informant disclosed the said fact to her sister and brother-in-law. It is next alleged that the father of the petitioner despite being aware of the fact did not support, nor became ready to get the petitioner married to the informant. It is further alleged that informant came to know that the petitioner was getting married somewhere else, on which her sister and brother-in-law protested against the said marriage, they were also assaulted.

The learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case. It is next submitted that from bare perusal of the allegation as alleged in the F.I.R., it would manifest that the informant alleges that after the death of her father, she was facing problem in leading a decent life, as such, she had come to her sister's house where on the point of knife, she was raped by this petitioner, who subsequently promised that he will marry and based on the



promise, he continued to establish physical relation.

The learned counsel next submits that from perusal of the allegation, it appears that the petitioner all of a sudden, came in the house when sister and brother-in-law of the informant had gone out finding her alone committed rape on the point of knife when in reality the husband of the sister of the informant is own brother of the father of the petitioner, as such, petitioner is own nephew of the brother-in-law of the informant, but from reading of the F.I.R., the said relationship does not even get remotely reflected which amply demonstrates that the petitioner for some ulterior reason or reasons best known to her has tried to falsely implicate the petitioner and his family members.

The learned counsel next submits that it is not the case of the informant that the petitioner established physical relation on the promise of marriage, but the allegation is that initially she was raped on the point of knife and thereafter, the petitioner promised her to marry and she very conveniently continued establishing physical relation with a person, who initially was a rapist based on the promise.

The learned counsel for the petitioner next submits that informant was earlier married to Md. Neyaz, but the



marriage could not last, as there was a divorce as would be evident from the pleading at para-6. The learned counsel next draws the attention of the Court to Annexure-2 page 19 to submit that Complaint Case No.1002 of 2019 was instituted by the present informant against the present petitioner and other accused persons in the Court of learned C.J.M., Darbhanga under Sections 341, 323, 354, 376, 504 of the I.P.C.

The learned counsel next submits that the said complaint case came to be dismissed under Section 203 of the Cr.P.C. as would be evident from Annexure-3 to the anticipatory bail application by order dated 24.12.2019. The learned counsel submits that after the said case came to be dismissed, then the present F.I.R. came to be instituted that in itself demonstrates that the informant somehow or the other was trying to coerce the petitioner to marry her as the petitioner is own nephew of her own sister Nesra Khatoon. The learned counsel further submits that a person who is alleged to have committed rape can never promise marriage and even if such person will promise marriage, then also the victim will never rely on him based on his conduct. The learned counsel further submits that even presuming what has been alleged is true without admitting for the purposes of anticipatory bail, then from the tenor of the



allegation, it would manifest that two consenting adults came together and on their own volition entered into physical relation and when the relationship soured, the present false came to be instituted. The learned counsel next submits that physical relation entered voluntarily on one's own volition definitely does not amount to rape, nor fits in the definition of rape as defined in Section 375 of the Cr.P.C. It is next submitted that since the informant has concealed relevant facts in the F.I.R. that in itself demonstrates that her intention was only to pressurize the petitioner for marriage.

The learned counsel for the informant and the learned A.P.P. opposes the bail application, but are not able to meet the submission of the learned counsel for the petitioner that relationship in the F.I.R. has been concealed and whether a victim who has been raped on point of knife will believe and rely on the rapist promise to marry so easily on the day of rape itself and will continue establishing physical relation.

Considering the submissions made by the learned counsel for the petitioner and the fact that the prima facie the allegations in form of the submissions made, does not inspire confidence, the petitioner above-named, in the event of his arrest or surrender before the learned Court below within a



period of six weeks, is directed to be released on bail on his furnishing bail-bonds in the sum 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 in connection with Darbhanga Mahila P. S. Case No.08 of 2020, subject to the conditions laid down under Section 438(2) of the Cr.P.C.

The application stands allowed.

(Satyavrat Verma, J)

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