

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.4459 of 2023

Arising Out of PS. Case No.-297 Year-2022 Thana- BARARI District- Katihar

MD. ENZAMUL HAQUE @ IANJAMUL @ INZAMUL HAQUE SON OF
MD. YUNUS @ MU. YUNUS R/O VILLAGE- MARGHIA HAKIM, P.S.-
BARARI, DISTRICT- KATIHAR

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Najeeb Ahmad, Advocate
For the Opposite Party/s	:	Mr. Uday Chand Prasad, APP
For the Informant	:	Mr. Ratnakar Ambastha, Advocate
		Mr. Rajendra Prasad Sah, Advocate

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

4 04-07-2023 Heard learned counsel for the petitioner and learned
APP for the State along with learned counsel for the informant.

The petitioner apprehends his arrest in a case registered for the offences punishable under Sections 341, 323, 354, 376, 504, 506 and 34 of the Indian Penal Code and under Section 4 of the POCSO Act.

The learned counsel for the petitioner submits that petitioner is a person with clean antecedent and the informant alleges that petitioner on false promise of marriage established physical relation with her, further when the informant asked the petitioner to marry her, he told her to talk to his father Md. Yunus, it is next alleged that father and elder brother of the



petitioner demanded Rs. 10 Lakhs by way of dowry and thereafter on orders of Md. Yunus, the elder brother of the petitioner molested her by touching inappropriately.

The learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case, it is next submitted that from tenor of the allegation, it would manifest that the informant is trying to coerce the petitioner into submission for the purposes of marriage, it is next submitted that, in order to coerce the petitioner into submission, the informant has even implicated the father and elder brother of the petitioner, it is next submitted that it absolutely does not stand to reason that if father and elder brother of the petitioner were demanding Rs. 10 Lakhs by way of dowry for performing the marriage then where was the occasion for the father of the petitioner to ask his elder son to ravish the informant, it is also submitted that it absolutely does not stand to reason that a son in presence of his father would molest a woman.

The learned counsel for the petitioner further makes an interesting submission and submits that even presuming what has been alleged is true without admitting then it is not a case of false promise, but then in the nature of allegation it can be a case of breach of promise but then breach of promise does not



attract the offence as alleged.

The learned counsel for the petitioner next submits that the statement of the victim was recorded by the police during the course of investigation under Section 161 Cr.P.C, as would be evident from Para-22 of the case diary and from perusal of the same, it would manifest that the victim has not even remotely whispered that the petitioner had established any physical relations with her though in her statement recorded under Section 164 Cr.P.C., she has stated in one line that the petitioner established physical relations.

The learned counsel for the petitioner next submits that after institution of the present F.I.R., the informant was requested to go for a medical check up, but then she refused in writing and subsequently after a long time of the occurrence she gave her consent, but then the medical report does not corroborate rape and at the same time the doctor assessed her in between 18-19 years.

The learned counsel for the petitioner, thus, submits that the informant in terms of the assessment of her age by the doctor was a major and when two consenting adults come together and establish relationship and subsequently when the relationship sours then the allegation as alleged surfaces.



The learned counsel for the petitioner next submits that the prosecution is relying on a School Leaving Certificate of the informant to show that the informant was a minor as her date of birth recorded in the School Leaving Certificate is 07.05.2005. It is further submitted that even presuming that the informant was a minor on the date of occurrence, but then she had reached the age of discretion and it cannot be said that she was misled or the relationship was forceful.

The learned A.P.P. for the State and learned counsel for the informant oppose the prayer for anticipatory bail of the petitioner but are not in a position to rebut the submissions of the learned counsel for the petitioner that the doctors have assessed the informant in between 18-19 years, the relationship initially was consensual, the informant in writing refused her medical check up and in her statement recorded under Section 161 Cr.P.C, she has not even remotely whispered about rape.

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 trial court within a period of six weeks from today, be released on anticipatory bail on furnishing bail bonds of Rs. 5,000/- (Rupees Five Thousand) with two sureties of the like amount each to the



satisfaction of the learned trial court where the case is pending/successor court in connection with Barari P.S. Case No. 297 of 2022 subject to the conditions as laid down under Section 438 (2) of the Cr.P.C.

Accordingly, the present anticipatory bail application stands allowed.

(Satyavrat Verma, J)

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