

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.3774 of 2023

Arising Out of PS. Case No.-186 Year-2022 Thana- DIGHWARA District- Saran

Rohitash Kumar, Son of Bijendra Ram, male, aged about 30 years, R/o Village - Bajahiya, P.S.- Dariyapur, District - Saran.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Vandara Priyashi, D/o Manager Ram, R/o Sitalpur, Basti Jalal, P.S.- Dighwara, Chapra (Saran), Bihar.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Sumit Kumar, Advocate Mr. Puneet Siddhartha, Advocate
For the State	:	Mr. Shahabuddin Azeem @ S. Azeem, APP
For the Informant	:	Mr. Bindhyachal Singh, Sr. Advocate Mr. Sachin Kumar, Advocate Mr. Rakesh Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
CAV JUDGMENT

Date : 05-09-2023

Heard learned counsel for the petitioner, learned counsel for the informant and learned APP for the State.

2. This application has been filed under Section 438 of the Code of Criminal Procedure, 1973 for enlarging the petitioner on anticipatory bail in connection with Dighwara P.S. Case No. 186 of 2022 dated 02.06.2022, registered for offences punishable under Sections 493 and 506 of the Indian Penal Code and 3 and 4 of the Dowry Prohibition Act, and after further investigation it has been converted into Section 420/376 of Indian Penal Code and 3 and 4 of the Dowry Prohibition Act.



3. As per the FIR, the prosecution story is that informant and sister of petitioner were friends and petitioner with his sister used to visit her house and the petitioner proposed to marry with her. The informant asked him to talk with her parents and the parents of informant clarified that they will not give any dowry which was accepted by the petitioner that he will not take any dowry. Petitioner gave a mobile to informant, started talking with her and on false promise made physical relation with her many times. Subsequently, the petitioner refused to marry with her and demanded Rs. 10 lakhs alongwith one bullet motorcycle and other accused persons threatened the informant and her family members of dire consequences if she approach police station or Court. The petitioner is a Jawan in B.S.F.

4. Learned counsel for the petitioner has submitted that the petitioner is innocent and has falsely been implicated in this case with view to harass him. It is submitted that no physical/sexual relationship has taken place between the parties and the marriage was called off not due to demand of dowry but due to arrogance of informant family. The petitioner is working as Constable in the Border Security Force (BSF) for the defence and security of the nation and committed no offence, as alleged. He has



developed genuine liking and love for the informant and express his desire to marry her, meeting and talks were held between the families and marriage was almost finalized but on asking about previous failure of marriage talks of informant with some other and a panchayat settlement, the family members of the informant refused to talk and the informant falsely filed the present FIR with *mala fide*. Further, he submits that petitioner has no criminal antecedent and he is a serviceman in BSF and there is no chance to escape from the legal process of justice. There is no requirement of custodial interrogation of the petitioner as all evidences in the matter has already been investigated and the petitioner undertakes to join and cooperate in the investigation as and when required and called by the investigating agency and/or any authority.

5. Learned counsel for the petitioner has further submitted that even if the claim of the informant that the petitioner had sexual relationship with the informant by getting her consent through the false promise of marriage is accepted, then the same would not amount to rape. They were known to each other for six years. In medical examination of informant, the doctor has not found any recent sexual intercourse. He has referred the decisions of Hon'ble Supreme Court in the matter of **Uday vs. State of Karnataka (2003) 4 SCC 46; Shambhu Kharwar vs. State of**



Uttar Pradesh & Anr. (2022) SCC OnLine 1032 and other judgments in support of his contention.

6. Per contra, learned counsel for the informant has submitted that there is specific and direct allegation against the petitioner that he has on false pretext of marriage, established sexual relations with her and refused to marry her thereafter demanding dowry and he does not deserve anticipatory bail.

7. Learned APP for the State has supported the contention of the informant and has submitted that the conduct of the petitioner and the direct allegation against the petitioner of committing rape on informant which is serious in nature.

8. An offence is punishable under Section 376 of the I.P.C. if the offence of rape is established in terms of Section 375 which sets out the ingredients of the offence. In the present case, the second description of Section 375 alongwith Section 90 of the I.P.C. is relevant which deals with consent.

9. In **Uday vs. State of Karnataka (2003) 4 SCC 46**, the Hon'ble Supreme Court observed:

“...It usually happens in such cases, when two young persons are madly in love, that they promise to each other several times that come what may, they will get married. As stated by the prosecutrix the appellant also made such a promise on more than one occasion. In such circumstances the promise loses all significance, particularly when they are overcome with emotions and passion



and find themselves in situations and circumstances where they, in a weak moment, succumb to the temptation of having sexual relationship. This is what appears to have happened in this case as well, and the prosecutrix willingly consented to having sexual intercourse with the appellant with whom she was deeply in love, not because he promised to marry her, but because she also desired it. In these circumstances it would be very difficult to impute to the appellant knowledge that the prosecutrix had consented in consequence of a misconception of fact arising from his promise. In any event, it was not possible for the appellant to know what was in the mind of the prosecutrix when she consented, because there were more reasons than one for her to consent.”

10. In **Pramod Suryabhan Pawar vs. State of Maharastra & Anr. (2019) 9 SCC 608**, the Hon’ble Supreme Court observed:

“ To summarise the legal position that emerges from the above cases, the “consent” of a woman with respect to Section 375 must involve an active and reasoned deliberation towards the proposed act. To establish whether the “consent” was vitiated by a “misconception of fact” arising out of a promise to marry, two propositions must be established. The promise of marriage must have been a false promise, given in bad faith and with no intention of being adhered to at the time it was given. The false promise itself must be of immediate relevance, or bear a direct nexus to the woman’s decision to engage in sexual act.”

It was further observed:

“There may be cases where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused, and not solely on account of misrepresentation made to her by the accused, or where an accused



on account of circumstances which he could not have foreseen, or which were beyond his control, was unable to marry her, despite having every intention to do so. Such cases must be treated differently.”

11. The Hon’ble Supreme Court in **Sonu @ Subhash Kumar vs. State of Uttar Pradesh 2021 SCC Online SC 181** observed that in context of a promise to marry there is a distinction between a false promise given on the understanding by the maker that it will be broken, and the breach of a promise which is made in good faith but subsequently not fulfilled. Where the promise to marry is false and the intention of the maker at the time of making the promise itself was not to abide by it but to deceive the woman to convince her to engage in sexual relations, there is ‘misconception of fact’ that vitiate the woman’s consent. On the other hand, a breach of a promise cannot be said to be a false promise. To establish a false promise, the maker of the promise should have had no intention of upholding his word at the time of giving it.

12. In **Shambhu Kharwar vs. The State of Uttar Pradesh (2022 SCC OnLine SC 1032)**, the Hon’ble Supreme Court has taken note of the judgment in Pramod Suryabhan Pawar vs. State of Maharashtra (supra) and Sonu @ Subhash Kumar vs. State of Uttar Pradesh (supra) reiterated the observations made



therein. The crucial issue which is to be considered is whether the allegations indicate that the petitioner had given a promise to informant which at the inception was false and on the basis of which informant was induced in a sexual relationship.

13. In the present case, as per the prosecution case, the petitioner and the informant were involved in the consensual physical relationship; they were known to each other for six years, talks of marriage held between their family members but the same had not been concluded. There is no evidence to support that the promise to marry made to informant was false at the inception. The petitioner has taken undertaking to cooperate with the police in investigation.

14. In view of the aforesaid facts and circumstances, and in view of the legal position, this Court is inclined to allow this anticipatory bail application. Accordingly, the petitioner, above named, is ordered to be released on bail in the event of his arrest or surrender before the learned trial Court within a period of six weeks from today in connection with Dighwara P.S. Case No. 186 of 2022 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 trial Court where the case is pending in



successor Court subject to the conditions as laid down under Section 438(1) Cr. P.C. and on further conditions that:

(a) he shall cooperate in investigation and appear the Investigating Officer of the case as and when required.

(b) he shall not directly or indirectly make an inducement, threat or promise to any person acquainted with the facts of the case.

(c) In case of change of residential address, the same shall be intimated to the Investigating Officer/Court concerned by way of an affidavit.

15. The application stands disposed of in the above terms.

16. Other pending applications, if any, also stands disposed of.

17. At the trial, the concerned Court shall not be influenced by the *prima facie* observations made by this Court in the present order.

(Sunil Dutta Mishra, J)

P. Kumar

AFR/NAFR	AFR
CAV DATE	31.08.2023
Uploading Date	05.09.2023
Transmission Date	

