

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.9003 of 2023

Arising Out of PS. Case No.-61 Year-2022 Thana- SHASTRINAGAR District- Patna

Danish @ Danish Alam Khan (Male) aged about 32 years, Son of Mohammad Azhar Imam @ Sona Khan R/o Opposite Purani Msjid, Samanpura, Raja Bazar, B.V. College, P.S.- Shastri Nagar, District- Patna.

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

Appearance :

For the Petitioner/s	:	Mr. Ansul, Advocate Mr. Anuj Kumar, Advocate
For the State	:	Mr. Uma Shankar Prasad Singh, APP
For the Infomant	:	Mr. Ashish Giri, Advocate Ms. Riya Giri, Advocate Mr. Sumit Kumar Jha, Advocate

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
CAV JUDGMENT

Date : 11-09-2023

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

2. The petitioner seeks bail in anticipation of his arrest in shastri Nagar P.S. Case No. 61 of 2022 registered for the offences punishable under Section 341, 342, 323, 354, 354-A, 504, 506/34 of the Indian Penal Code and later on, section 376 and 493 of the 1.P.C. was also added vide order dated 07.12.2022.

3. The petitioner and the informant were friends. After some time, the petitioner established physical relation with the informant on the pretext of marriage but when she asked to



solemnize the marriage, the petitioner denied. After sometime the petitioner alongwith his three friends kidnapped her and kept her in the house where sister and mother of petitioner assaulted and abused her and torn her clothes, made nude video of her.

4. Learned counsel for the petitioner has submitted that petitioner is innocent and has falsely been implicated in the instant concocted and manufactured case on account of ulterior motive of black mailing the petitioner who is an MBA and drawing a handsome salary, while working as Area Manager in HP Company. Further, the petitioner denied that he had entered into a physical relation with informant on pretext of marriage. Learned counsel for the petitioner has submitted that even if the entire prosecution case is admitted, for the sake of argument, the case seems to be of consensual sex between two adults which is not a crime. The informant is an adult educated, woman who was well aware of the facts and circumstances and Section 375 of I.P.C. is not applicable in consensual sex. The informant has improved her version. He referred the Judgment of Hon'ble Supreme Court in **Pramod Suryabhan Pawar Vs. State of Maharashtra and Anr. (2019) 9 SCC 608; Sonu @ Subhash kumar Vs. State of Uttar Pradesh and Anr. (2021) SCC online SC 181** wherein the Hon'ble Supreme Court quashed the



F.I.R. where the parties were involved in sexual relations on the basis of promise to marry which was later on not work out. It is further submitted that petitioner is ready to abide by the conditions laid down under Section 438 (2) of Cr.P.C.

5. Per contra, learned counsel for informant and learned APP for the state have vehemently opposed the anticipatory bail of the petitioner and have submitted that there is direct allegation against the petitioner of committing rape on informant which is serious in nature. The petitioner had given promise to informant which at the inception was false and on that basis he induced the informant in a sexual relationship with him. The petitioner has also kidnapped and made nude video of the informant. Learned counsel for the informant has submitted that petitioner even during the pendency of this application, threaten the informant and making pressure on her for which she has filed complaint before the court concern. Further, he has submitted that the law is well settled that while deciding an application for bail, the Court ought to refrain from undertaking a detailed analysis of the evidence and the focus shall be on the *prima facie* issues. It is further submitted that there is sufficient *prima facie* material in the F.I.R. to have made out serious offences including offence under Section 376 I.P.C.



6. It is further submitted that this Court vide order dated 22.03.2023 passed in Criminal Miscellaneous No. 18301 of 2023 filed on behalf of Co-accused persons observed that from reading of the F.I.R., it appears that prima facie case is made out against the petitioners. 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.

7. Section 114-A of the Indian Evidence Act, 1872 is also relevant which deals certain prosecution as to absence of consent in certain prosecution for rape. A reading of the said section makes it clear that where sexual inter course by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped, and such woman states in her evidence before the Court that she did not consent, the Court shall presume that she did not consent.

8. In **Pramod Suryabhan Pawar Vs. State of Maharashtra & 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.”

9. 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 vitiates 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.

10. It appears from the F.I.R, that there is direct allegation against the petitioner that he has established physical relation with the informant on the promise to marry with her, but later on denied the same without any reason and also assaulted, kidnapped and made video. The allegation in F.I.R. has been corroborated by her in her confessional statement under Section 164 Cr.P.C. Further, allegation is that the petitioner is still harassing the informant.

11. Considering the aforesaid facts and circumstances, this Court is not inclined to grant anticipatory bail to the petitioner and the application is, accordingly, dismissed.

(Sunil Dutta Mishra, J)

shweta/-

AFR/NAFR	NAFR
CAV DATE	06.09.2023
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