

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.32054 of 2023

Arising Out of PS. Case No.-115 Year-2022 Thana- MAHILA P.S. District- Patna

Abhishek Kumar Barbaria @ Abhishek Kumar @ Abhishek Barbaria @ Chikku @ Chiku, Son of Murari Lal Barbaria, Resident of Anand Chikitsalay Road Sujaganj, Jagdishpur, P.S. - Kotwali, Bhagalpur, Bihar, Pin Code - 812001. At present Transport Gali Opposite Reliance Mall, Devkinandan Apartment Flat No. 101, Mundi Chak Bhagalpur, P.S. - Tilakmanjhi, Distt. - Bhagalpur.

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

Appearance :

For the Petitioner	:	Mr. Firoz Ahmad, Advocate
For the State	:	Mr. Arun Kumar Singh, APP
For the Informant	:	Mr. Kumar Rajdeep, Advocate

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

3 11-08-2023 Heard learned counsel for the petitioner, learned Additional Public Prosecutor for the State and learned counsel for the informant.

2. The accused/petitioner seeks bail in connection with Mahila P.S. Case No.115 of 2022 registered for the offences punishable under Sections 376 read with 34 of the Indian Penal Code and Section 4 of the Dowry Prohibition Act.

3. The accused/petitioner is named in the FIR and is in custody since 02.02.2023.

4. Allegation against the petitioner is to commit rape upon informant/victim who is widow of late Vijay Kumar Kediya aged about 30 years and mother of one female child.



5. It is submitted by learned counsel that petitioner got acquainted through social media with victim/informant and in furtherance of that acquaintance, love affairs developed between them. It is submitted that alleged physical relation was established out of consent and when marriage with informant could not be negotiated out of certain reasons, the present false implication was raised. It is submitted that any such type of corporeal relationship on false pretext of marriage cannot be termed as rape and in support of his submission, learned counsel for the petitioner relied upon a decision of Hon'ble Supreme Court in the matter of **Ansar Ahmad vs. The State of Rajasthan and Anrs. [(2022) SCC Online (SC) 886]**. It is also submitted that the victim also failed join medical examination as to corroborate her allegation. While concluding argument, it is submitted that investigation of this case is completed for which, charge-sheet has been submitted and, as such, there is no chance of tampering with the evidence.

6. Learned APP duly assisted by learned counsel appearing on behalf of the informant, while opposing the prayer for bail submitted that the allegation as to commit rape upon victim/informant is specifically against this petitioner. He further submitted that non-finding of injury or any corroborative



medical evidence does not lead to a conclusion *ipso facto* that rape was not committed upon, as rape is a legal finding.

7. In view of above-mentioned facts and circumstances and by taking note of fact as implication of this petitioner appears out of false pretext of marriage, coupled with the fact that charge-sheet has already submitted, where petitioner is in custody since 02.02.2023, accordingly, the petitioner, above-named, is directed to be released on bail furnishing bail bond of Rs.10,000/- (Rupees Ten Thousand) with two sureties of the like amount each to the satisfaction of the learned Judicial Magistrate-1st Class-cum-A.M. XXII Court No.22, Patna in connection with Mahila P.S. Case No.115 of 2022, subject to the conditions as laid down under Section 437(3) of the CrPC.

(Chandra Shekhar Jha, J.)

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