

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.28511 of 2022

Arising Out of PS. Case No.-40 Year-2022 Thana- BRAHMPURA District- Muzaffarpur

ASHOK MISHRA S/o Late Nagendra Mishra R/o Mohalla - Chandni Chowk
Narain Public School, P.S. Barahampura, District - Muzaffarpur.

28511

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner	:	Mr. Bijay Kumar Pathak, Adv.
For the State	:	Mr. Binod Kumar, APP
For the informant	;	Mr. Brij Kumar Pathak, Advocate

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL ORDER

6 19-01-2023 Heard the learned counsel for the petitioner and the learned APP for the State as also learned counsel for the informant.

The petitioner seeks regular bail in connection with Brahampura P.S. Case No. 40 of 2022, registered for the offences punishable under Sections 376, 354(b) and 506 of the Indian Penal Code.

The allegation is regarding the petitioner having enticed the informant, who is working as Assistant Director, Indian Film and Television Director Association since the year 2014, whereafter he had assured the informant



that he has lot of money and would invest in her films. It is further alleged that on 15.10.2015, the petitioner had called the informant to his house, drugged her and then he used to blackmail her by showing her nude photographs to her. It is also alleged by the informant that in the past five years, the petitioner had sexually abused her on several occasions by blackmailing her.

The learned counsel for the petitioner has submitted that the petitioner is innocent, he has been falsely implicated in the present case and he is languishing in custody since 03.04.2022. It is further submitted that though the petitioner is in custody since 03.04.2022, but in between for a period of 56 days, he had been on provisional bail. It is also submitted that though the petitioner is an accused in two other cases, but he is on bail in the said two cases. The learned counsel for the petitioner has next contended that it is highly improbable that the complainant would for a period of five years bear advances of the petitioner, hence it is apparent



that both the complainant and the petitioner had established physical relationship amongst themselves with mutual consent. It is also submitted that in case, the complainant was aggrieved by the action of the petitioner, she could have filed appropriate complaint/criminal case earlier. Lastly, it is submitted that at best the present case can be said to be a case of consensual sex between both the parties who are adults and are capable of exercising their independent prudent mind as to what is right and what is wrong. The learned counsel for the petitioner has referred to a judgment rendered by the Hon'ble Apex Court in the case of **Dr. Dhruvaram Murlidhar Sonar v. State of Maharashtra and others** reported in (2019) 18 SCC 191.

Per contra, the learned APP for the State as also the learned counsel for the informant have vehemently opposed the prayer for bail and have submitted that the petitioner used to not only harass the complainant but also



blackmail her and in the process had sexually abused her many times. It is also contended that the petitioner may not appear before the learned Trial Court, on the date so fixed and may impede the trial, hence, he be not granted the privilege of bail.

Having regard to the facts and circumstances of the case, considering the submissions made by the learned counsel for the parties and taking into account the materials on record as also those contained in the case diary, this Court finds that prima facie the parties are consenting adults, who may have indulged in consensual intercourse, which would not constitute rape, specially if such relationship is continuing for a long period of time, however without adverting to the merit of the case, which may effect rights of the respective parties but keeping in view the fact that in case the complainant was aggrieved by the action of the petitioner, she could have raised her grievances earlier by filing appropriate complaint case/



F.I.R., which she did not do, apart from taking into account the period of incarceration of the petitioner, I deem it fit and proper to admit the petitioner to the privilege of bail but subject to certain strict conditions.

Accordingly, the above named petitioner is directed to be enlarged on bail on furnishing bail bonds of Rs. 10,000/- (rupees ten thousand) with two sureties of the like amount each to the satisfaction of learned C.J.M., Muzaffarpur in connection with Brahampura P.S. Case No.40 of 2022.

It is needless to state that the petitioner shall appear before the learned trial court on each and every date so fixed by the learned Trial Court and in case of any default, the present privilege of bail being granted to the petitioner shall stand cancelled automatically and the petitioner shall be liable to be taken into the custody, forthwith. The complainant is also granted liberty to move this Court for cancellation of bail of the petitioner in case he either tampers with the evidence or



intimidates/ blackmails the complainant.

The petition stands disposed off on the
aforesaid terms.

(Mohit Kumar Shah, J)

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