

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.33104 of 2023

Arising Out of PS. Case No.-392 Year-2022 Thana- SHRIKRISHNAPURI District- Patna

AMRITESH PRIYADARSHI S/o- SHRI SANJEEV KUMAR R/O
SHANTIPURAM, NEAR MAHILA COLLEGE, WARD NO. 08,
MADHUBANI, PRESENTLY RESIDING AT WINSOME EMPIRE,
RUPASPUR, P.S. RUPASPUR, DANAPUR, PATNA

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s :	Mr. Dayanand Singh, Adv.
For the Opposite Party/s :	Mr. Satyendra Narayan Singh, APP.
	Mr. Shailendra Kumar Singh, Adv.
	Mr. Prabeen Kumar Singh, Adv.
	Mr. Ashok Kumar, Adv.
	Mr. Parwej Kumar, Adv.

CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
CAV ORDER

6 01-12-2023 Heard learned counsel for the petitioner, learned counsel
for the informant and learned APP for the State.

2. The petitioner seeks bail in anticipation of his arrest in
S.K. Puri P.S. Case No. 392 of 2022 dated 01.10.2022 registered
for the offence punishable under Section 376, 406, 420 and 506
of the Indian Penal Code and later on, converted under Sections
376 and 493 of the I.P.C.

3. The learned counsel for the petitioner submits that
petitioner is a person with clean antecedent and is an Advocate
and was junior of Late Sanjay Kumar Manu (Advocate). It is next
submitted that the informant (wife of Late Sanjay Kumar Manu)
alleges that her husband died in the year 2020, during CORONA



period. Further, when her husband was ill, the petitioner provided help and care and thus, came close to the informant. It is next alleged that after the death of her husband, she became ill and taking advantage of the situation, petitioner used to drug her and started selling her properties and even took both sons into confidence, who are studying at Dehradun. It is next alleged that petitioner's father (Sanjiv Kumar) and sister (Akanksha Rai) also started living in the house of the informant. Further, the petitioner thereafter started establishing physical relation with her by giving intoxicated medicines and even took her business of Hostel and Mart at Dehradun. It is next alleged that in the occurrence, the petitioner was helped by his wife (Puja Priyadarshi), sister and father and his father also established physical relation with her. It is next alleged that they took her objectionable pictures and used to blackmail her and even threatened to kill her sons or else to register the property at Boring Road and Dehradun. It is further alleged that she was threatened that her objectionable pictures would be made viral.

4. The learned counsel for the petitioner submits that petitioner has been falsely implicated in the present case. It is next submitted that it is not a case under Section 376 of the I.P.C. The learned counsel submits that after the death of Sanjay Kumar Manu, the informant and the petitioner fell in love and they



performed marriage in an Arya Samaj Mandir on 08.02.2021 and in support of the same, the petitioner relies on Annexure-2 to the anticipatory bail application, which is a photograph of the marriage of the petitioner with the informant. It is next submitted that during the course of investigation, came to a considered conclusion that no offence under Sections 420, 406 and 506 of the I.P.C. is made out, but the case was found true under Section 376 and 493 of the I.P.C.

5. The learned counsel for the petitioner next submits that during the course of investigation, it has also come that the properties of late Sanjay Kumar Manu was sold by his mother and the amount was credited in the account of the informant. It is further submitted that informant after death of her husband when lenders and bank officials visited to house of informant then the informant learnt that her husband was surrounded by debts of more than two crores and after his death, none of the family members came to help the informant and the petitioner extended all possible help to the informant to come out of the debts and help her to establish a small business in Dehradun to get the informant relocate/shift there and live peacefully. Later on, the petitioner and the informant started to face compatibility issue and, therefore, the petitioner filed an application for divorce before the Court of Principal Judge, Family Court vide



Matrimonial Case No. 706 of 2022 and the informant, after getting infuriated from the divorce petitioner filed by the petitioner, registered the instant F.I.R. with the sole motive to pressurize the petitioner by falsely implicating him and his family members. It is further submitted that since it is not in dispute that petitioner and the informant performed their marriage on 08.02.2021, as such, it cannot be alleged that petitioner committed rape upon the informant. It is next submitted that in the F.I.R., it is also alleged that the petitioner in the occurrence was being helped by his father, sister and wife (Puja Priyadarshi), but then the marriage of the petitioner with Puja Priyadarshi was subsequent to the marriage of the petitioner with the informant. It is next submitted that petitioner on 28.05.2022 filed an application seeking divorce under Section 13 of the Hindu Marriage Act.

7. The learned counsel for the informant opposes the anticipatory bail application of the petitioner and submits that though it has been submitted by the learned counsel for the petitioner that he performed marriage with the informant on 08.02.2021, but the petitioner was already married with Puja Priyadarshi. It is further submitted that since the marriage of the petitioner with Puja Priyadarshi was earlier to his marriage with the informant that in itself makes the marriage of the petitioner



with the informant void. It is thus submitted that if the marriage was void, then definitely Section 376 of the I.P.C. gets attracted. The statement of the informant/victim was recorded under Section 164 Cr.P.C. in which she supported the prosecution case. The counsel for the informant further submitted that the petitioner and his wife co-accused, namely, Puja Priyadarshi playing friendly match with informant and filed a Matrimonial Case (Divorce) No. 230 of 2022 under Section 13(b) of Hindu Marriage Act, 1955, at Madhubani Civil Court. He further submitted that the informant never to remarriage and she never get any consent of the marriage after death of her husband but petitioner obtained fake and false documents in collusion with the said Arya Samaj is issued by the Secretary.

8. Learned Counsel for the informant further submitted that the petitioner with co-accused Puja Priyadarshi disclosed their marriage in Matrimonial Case No. 230 of 2022 i.e. 21.02.2022 and petitioner filed Matrimonial Case No. 706 of 2022, in which petitioner discussed the date of so-called marriage i.e. 20.10.2021 and in this petition, petitioner annexed so-called marriage certificate in which the date of marriage is 08.02.2021. The petitioner fraudulently wants to take over the business of informant and entered in a business agreement of informant and



her Company M/s. Creator Multiservice Private Limited.

9. Learned counsel for the informant lastly submits that the police do not investigate the case/matter properly in this regard, even not verified the bank account of informant or not investigated documents regarding marriage or not contacted with the informant regarding the fake and false documents prepared in her name by the accused/petitioner.

10. Learned counsel for the petitioner refuted the statements made by the learned counsel for the informant and submits that the I.O. has investigated the documents regarding marriage of the petitioner with informant. The I.O. has investigated in details which is mentioned in Para 32 of the case diary and with consent of both the parties, the marriage has been performed and death certificate of informant's husband has been given by the informant herself.

11. Learned counsel for the petitioner further submits that during the investigation and supervision note, the investigating officer has found that the informant itself disclosed to the wife of petitioner Puja Priyadrashi that informant has married with petitioner and also sent the photograph of marriage with petitioner and another documents related to her marriage with petitioner. But, in FIR, the informant has not disclosed this fact.



He further submits that when the investigating agency concluded that informant has married with petitioner, then how can the investigating authority came to the conclusion that it is a case of under Section 376.

12. Learned counsel for the petitioner further submits that in supervision note, the authority found that no case is made out against the co-accused Puja Priyadarshi and directs to adds the Section 493 along with 376 against the petitioner and regarding the other co-accused persons, re-investigation is going on. He lastly submits that with consent of the informant, the marriage has been taken place and both petitioner and informant are major as well as no medical report shows the sexual assault. Section 376 of the IPC is not made out against the petitioner as the exception 2 to the Section 376 provides that “*sexual intercourse or sexual acts by a man with his own wife, the wife not being under 15 years of age, is not rape*”. Therefore, in view of the aforesaid exception (2), even if all the allegations are assumed to be correct for the sake of the argument (without accepting the same and stoutly denying the same), no offence under Section 376 is make out against the petitioner. He relies upon the judgment of the Apex Court in the case of ***Ansar Mohammad v/s. The State of Rajasthan & Anr.*** reported in Criminal Appeal



No. 962 of 2022.

13. Considering the arguments of the parties and the view of the law laid down by the Hon'ble Apex Court in the case of *Ansar Mohammad (supra)*, let the above named petitioner, be released on bail, in the event of his arrest or surrender before the learned Court below within a period of six weeks from today, on furnishing bail bond of Rs.25,000/- (Rupees Twenty Five Thousand) with two sureties of the like amount each to the satisfaction of the learned lower Court where the case is pending/successor Court in connection with S.K. Puri P.S. Case No. 392 of 2022, subject to the condition as laid down under Section 438 (2) of the Cr.P.C.

14. However, the petitioner is directed to co-operate in the investigation and appear before the trial court on the date as fixed by the Court, and if the petitioner does not appear in two consecutive dates fixed by the Trial Court, the Trial Court is at liberty to cancel the bail bond of the petitioner.

(Anjani Kumar Sharan, J)

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