

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.32226 of 2023

Arising Out of PS. Case No.-6 Year-2022 Thana- VISHNUPAD District- Gaya

Abhishek Kumar @ Raja Son of Ajay Prasad Resident of Mohalla - Khawa
Gali, Chand Chaura, P.S.- Vishnupad, District - Gaya.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Ajit Kumar Ojha, Advocate Ms. Nutan Mishra, Advocate
For the Opposite Party/s	:	Mr. Dashrath Mehta, APP
For the Informant	:	Mr. Rajan, Advocate Mr. Sanjay Kumar Tiwari, Advocate

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

4 03-08-2023 Heard learned counsel appearing on behalf of the
petitioner and learned counsel appearing on behalf of the State.

2. The petitioner seeks bail in connection with
Vishnupad P.S. Case No. 06 of 2022 registered for the offence
under Section 376 read with 120-B of Indian Penal Code.

3. The accused/petitioner is named in the F.I.R. and
is in custody since 02.02.2022.

4. The allegation against the petitioner is to commit
rape upon informant/victim on several occasions on false pretext
of marriage and also capture the photographs of private
moment.

5. Learned counsel appearing on behalf of the
petitioner submitted that from the bare perusal of F.I.R. and
even from the statement of informant/victim as recorded under



Section 164 of Cr.P.C., it can be safely said that the present implication was raised only when marriage of informant, who appears major aged about 23 years at the time of occurrence could not materialize with petitioner for certain social reasons. It is submitted that the joint photographs of victim/informant with petitioner and letters written by her clearly suggest that they were under affairs and as such, alleged physical relation was established out of consent and cannot be categorized as rape. While travelling over the argument, learned counsel in support of his submission relied upon the report of Hon'ble Supreme Court in the matter of *Ansaar Mohammad Vs. State of Rajasthan and Another* reported in **2022 SSC Online SC 886**, where it has been reported that entering into any kind of corporeal relationship with a person on the pretext of getting marriage, cannot be termed as rape. While concluding the argument, it has been submitted that petitioner is a man of clean antecedent and moreover, investigation of this case has been completed, for which, charge-sheet has been submitted, as such, there is no chance of tampering with the evidence.

6. Learned APP duly assisted by learned counsel Mr. Rajan appearing for the informant, while opposing the prayer of bail submitted that the allegation of rape is specifically



available against this petitioner. It is also submitted that informant/victim gave birth to a male child out of said relation, which also confirmed after DNA examination, suggesting petitioner as father but fairly conceded the fact that informant/victim solemnized her marriage with someone else out of her own sweet will after delivery.

7. Considering the facts and circumstances as mentioned above, and by taking note of the fact as the allegation of rape was raised only for the reason that marriage between the parties could not negotiate for certain reasons, coupled with the fact that charge-sheet has already submitted, where petitioner is in custody since 02.02.2022, accordingly, above named petitioner is directed to be released on bail in connection with Vishnupad P.S. Case No. 06 of 2022 on furnishing bail bond of Rs.10,000/- (Rupees Ten Thousand only) with two sureties of the like amount each to the satisfaction of learned Additional Sessions Judge-III, Gaya/concerned court, subject to the conditions as mentioned under Section 437 (3) of the Cr.P.C., with further conditions:

“(i) That accused/petitioner shall not interact with victim/informant and also prosecution witnesses in whatsoever manner till the conclusion of



trial, failing which the State/informant shall be at liberty to move before the trial Court itself for the cancellation of bail bond of the petitioner.

(ii) That accused/petitioner shall cooperate in the trial and shall be physically present on each and every date before the trial Court till conclusion of the trial and exemption from physical appearance be allowed by the trial Court, only on medical ground of the petitioner, duly supported by the documents.

(iii) That one of the bailors shall be deponent of the present bail petition.”

(Chandra Shekhar Jha, J)

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