

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.47440 of 2023**

Arising Out of PS. Case No.-513 Year-2023 Thana- PHULWARISHARIF District- Patna

CHATURVEDI MANISH KUMAR @ MANISH CHATURVEDI Son of
Shivji Chaubey Resident of - HIG Colony, Flat No.- 06, Sector - 07, P.S.-
Agam Kuan, Dist.- Patna, Bihar.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Y.V. Giri, Senior Advocate with Mr. Pranav Kumar, Advocate Mr. Devashish Giri, Advocate
For the Opposite Party/s	:	Mr. Jitendra Kumar Singh, Advocate
For the Informant	:	Mr. Satish Kumar, Advocate

**CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT
Date : 11-08-2023**

Heard Mr. Y.V. Giri, learned Senior Counsel duly
assisted by Mr. Pranav Kumar, learned counsel for the petitioner
and Mr. Satish Kumar, learned counsel for the informant as also
Mr. Jitendra Kumar Singh, learned APP for the State.

The petitioner apprehends his arrest in connection
with Phulwarisharif P.S. Case No. 513 of 2023 for the offence



registered under Sections 376(1), 379, 323, 354, 504 and 506/34 of the Indian Penal Code lodged on 01.04.2023 by the informant, Purnima Tiwari.

As per the prosecution story, the informant is a widow blessed with three child and as she was unable to look after them and cater to their needs, she met with the petitioner who on the pretext of false promise of marriage made physical relationship with her. According to her, this continued for years. When the informant came to know that he is having relationship with another lady and upon making query from his parents, she was abused and thrown out from the house and further came to know that the petitioner is already married, the FIR

Mr. Y.V. Giri, learned Senior Counsel for the petitioner submits that from the First Information Report itself, it is clear that the petitioner entered into physical relationship on her own and the allegation of false promise of marriage is fit to be rejected, so far as the consideration of anticipatory bail is concerned. His submission is that these are the things which are to be taken into account at the time of trial.

In support of his case, he has cited an order of Hon'ble Apex Court in the case of **Dr. Dhruvaram Murlidhar Sonar vs. State of Maharashtra & Ors.** reported in (2019) 18



SCC 191 with specific reference to paragraph nos. 18 and 20

which read as follows:-

18. In Uday v. State of Karnataka, this Court was considering a case where the prosecutrix, aged about 19 years, had given consent to sexual intercourse with the accused with whom she was deeply in love, on a promise that he would marry her on a later date. The prosecutrix continued to meet the accused and often had sexual intercourse and became pregnant. A complaint was lodged on failure of the accused to marry her. It was held that consent cannot be said to be given under a misconception of fact. It was held thus: (SCC pp. 56-57, paras 21 & 23)

"21. It therefore appears that the consensus of judicial opinion is in favour of the view that the consent given by the prosecutrix to sexual intercourse with a person with whom she is deeply in love on a promise that he would marry her on a later date, cannot be said to be given under a misconception of fact. A false promise is not a fact within the meaning of the Code. We are inclined to agree with this view, but we must add that there is no straitjacket formula for determining whether consent given by the prosecutrix to



sexual intercourse is voluntary, or whether it is given under a misconception of fact. In the ultimate analysis, the tests laid down by the courts provide at best guidance to the judicial mind while considering a question of consent, but the court must, in each case, consider the evidence before it and the surrounding circumstances, before reaching a conclusion, because each case has its own peculiar facts which may have a bearing on the question whether the consent was voluntary, or was given under a misconception of fact. It must also weigh the evidence keeping in view the fact that the burden is on the prosecution to prove each and every ingredient of the offence, absence of consent being one of them.

23. Keeping in view the approach that the court must adopt in such cases, we shall now proceed to consider the evidence on record. In the instant case, the prosecutrix was a grown-up girl studying in a college. She was deeply in love with the appellant. She was, however, aware of the fact that since they belonged to different castes, marriage was not possible. In any event the proposal for their marriage was



bound to be seriously opposed by their family members. She admits having told so to the appellant when he proposed to her the first time. She had sufficient intelligence to understand the significance and moral quality of the act she was consenting to. That is why she kept it a secret as long as she could. Despite this, she did not resist the overtures of the appellant, and in fact succumbed to them. She thus freely exercised a choice between resistance and assent. She must have known the consequences of the act, particularly when she was conscious of the fact that their marriage may not take place at all on account of caste considerations. All these circumstances lead us to the conclusion that she freely, voluntarily and consciously consented to having sexual intercourse with the appellant, and her consent was not in consequence of any misconception of fact.”

20. *With this factual background, the Court held that the girl had taken a conscious decision, after active application of mind to the events that had transpired. It was further held that at best, it is a case of breach of promise to marry rather than a case of false promise to marry, for which the accused is prima facie accountable for damages under civil law. It was held thus: (Deelip Singh, SCC p. 106, para 35)*



-35. *The remaining question is whether on the basis of the evidence on record, it is reasonably possible to hold that the accused with the fraudulent intention of inducing her to sexual intercourse, made a false promise to marry. We have no doubt that the accused did hold out the promise to marry her and that was the predominant reason for the victim girl to agree to the sexual intimacy with him. PW 12 was also too keen to marry him as she said so specifically. But we find no evidence which gives rise to an inference beyond reasonable doubt that the accused had no intention to marry her at all from the inception and that the promise he made was false to his knowledge. No circumstances emerging from the prosecution evidence establish this fact. On the other hand, the statement of PW 12 that "later on", the accused became ready to marry her but his father and others took him away from the village would indicate that the accused might have been prompted by a genuine intention to marry which did not materialise on account of the pressure exerted by his family elders.*



It seems to be a case of breach of promise to marry rather than a case of false promise to marry. On this aspect also, the observations of this Court in Uday case at para 24 come to the aid of the appellant."

The sum and substance of the said order is that the consent of the victim involved in sexual relationship with the accused was there with sufficient intelligence to understand the significance and moral quality of the act, she was consenting to.

Learned counsel for the Informant submits that this case will not be applicable as there was a false promise of marriage.

This Court finds force in the submission put forward by the learned Senior counsel for the petitioner. The petitioner entered into physical relationship, she consented to the said act, whether the same was voluntary or given under misconception of fact and/or a promise, that is for the prosecution side to prove at the time of trial.

Considering the aforesaid facts on record and the submissions put forward by the learned Senior Counsel for the petitioner and further she look a conscious decision after application of her mind so far as the relief sought for by the



petitioner is concerned, this Court is inclined to extend him the same.

Let the petitioner, in the event of his arrest or surrender within a period of four weeks from the date of receipt of the order, shall be released on anticipatory bail on furnishing bail of Rs. 10,000/- (ten thousand) each with two sureties of the like amount each to the satisfaction of the learned Chief Judicial Magistrate, Patna in connection with Phulwarisharif P.S. Case No. 513 of 2023, subject to condition as laid down under Section 438(2) of the Cr.P.C.

(i) one of the bailor should be the family member of the petitioner who shall provide official document to show his/her *bona fide*;

(ii) the petitioner shall appear on each and every date before the Trial court and failure to do so for two consecutive dates without plausible reason will entail cancellation of his/her bail bond by the Trial court itself;

(iii) the petitioner shall in no way try to induce or promise or threat the witnesses or tamper with the evidences, failing which the State shall be at liberty to take steps for cancellation of his bail bonds;

(iv) the petitioner shall desist from committing any



criminal offence again failing which the State shall be at liberty
to take steps for cancellation of the bail bonds.

(Rajiv Roy, J)

Jagdish/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	17.08.2023
Transmission Date	

