

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.48378 of 2023**

Arising Out of PS. Case No.-688 Year-2022 Thana- AMARPUR District- Banka

MD. ETABUL S/O MD. MUNNA R/O Village- Etabari, P.S- Amarpur, Distt.- Banka.

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Praveen Kumar

For the Opposite Party/s : Mr.Md. Aslam Ansari

**CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH
SINGH**

ORAL ORDER

- 2 08-08-2023 1. Learned counsel for the petitioner is permitted to remove defect (s), as pointed out by the office, if any, within a period of four weeks on resumption of physical mode.
2. Heard learned counsel for the petitioner and learned A.P.P. for the State.
3. The petitioner has preferred this application for grant of regular bail in connection with POCSO Case No. 09 of 2023 arising out of Amarpur P.S. Case No. 688 of 2022 dated 4.12.2022 registered for the offence punishable u/s 341, 452, 323, 354B, 376, 120B, 504, 506 read with section 34 of the Indian Penal Code and 4 of the POCSO Act.
4. As per the prosecution case, when the victim along with her sister was at her home, the petitioner entered her home



and tried to outrage her modesty. It is further alleged that the victim was sexually assaulted by the petitioner about three years back on the pretext of marriage. A Panchayati was held on 23.3.2022 but the petitioner did not agree.

5. Learned counsel for the petitioner has submitted that the petitioner is innocent and has falsely been implicated in this case. Nothing incriminating material has been recovered from the conscious possession of the petitioner. Learned counsel has further submitted that as per annexure-2, the victim has denied to have examined by the Doctor. There is delay of 8 months from the date of occurrence in lodging this FIR. It is further submitted that there is no explanation as to why the mother of the victim lodged the F.I.R. after 8 months of the occurrence which makes the case highly improbable that sexual intercourse took place between the victim and the petitioner. There is no statutory compliance of Sections 53A and 164A of the Cr.P.C. Learned counsel for the petitioner has placed reliance on the judgment of the Apex Court in the case of **Mandar Deepak Pawar Vs. The State of Maharashtra & Anr.** passed in Cr. Appeal No(s). 442/2022; 27th July, 2022 in which the Hon'ble Supreme Court has held that “a distinction was made between a false promise to marriage which is given



on understanding by the maker that it will be broken and a breach of promise which is made in good faith but subsequently not fulfilled.” The petitioner has clean antecedent as stated in para 3 of the bail petition. The petitioner is in custody since 29.4.2023.

6. Learned A.P.P. for the State has vehemently opposed the bail petition of the petitioner and submitted that the victim in her statement recorded u/s 164 of the Cr.P.C. stated that the petitioner entered her house and tried to make physical relationship with her.

7. Considering the aforesaid facts and circumstances of the case as well as the period of custody, the petitioner above-named, is directed to be enlarged on bail on furnishing bail-bond of Rs.20,000/- (Rupees Twenty Thousand) with two sureties of the like amount each to the satisfaction of learned Court concerned, Banka in connection with POCSO Case No. 09 of 2023 arising out of Amarpur P.S. Case No. 688 of 2022 with the condition:-

(i) The petitioner is directed to remain physically present before the learned Court below on each and every date, failing which on two consecutive dates without reasonable cause, the bail bonds of the petitioner are liable to be cancelled.



8. The application stands allowed.

(Chandra Prakash Singh, J)

Ajay Singh/-

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