

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.3362 of 2023

Arising Out of PS. Case No.-11 Year-2023 Thana- SC/ST District- Kaimur (Bhabua)

Chandan Pandey, Son of Rangjee Pandey, Resident of Village - Basmanpur,
P.O. - Belawn, P.S. - Sikraul, District - Buxar

... .. Appellant/s

Versus

1. The State of Bihar
2. Jyoti Kumari, D/o Hari Charan Ram, Resident of Village - Punaon, P.S. -
Belaon, District - Kaimur (Bhabua)

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Kumar Sunil, Advocate
For the Respondent	:	Mr. Vinod Kumar Seth, Advocate
For the State	:	Mr. Binay Krishna, Spl. P.P.

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL ORDER

2 04-09-2023 Heard learned counsel for the appellant and learned
Special Public Prosecutor for the State and learned counsel for
respondent no. 2.

2. This is an appeal under Section 14(A)(2) of the
Scheduled Castes and Scheduled Tribes (Prevention of
Atrocities) Act, 1989 (hereinafter in short referred to as the
'SC/ST Act') against the refusal of prayer of anticipatory bail
vide order dated 16.06.2023, passed by learned Additional
Sessions Judge-1, Kaimur (Bhabua), in connection with A.B.P.
No. 715 of 2023, arising out of Bhabua SC/ST P.S. Case No. 11
of 2023 registered under Sections 341, 323, 504, 506, 376, 419,
420, 34 of the Indian Penal Code and Sections 3(1)(r)(s) (w)/



3(2)(v) of the SC/ST Act.

3. Allegation against the appellant is that he established physical relation with the informant at many times on the pretext of marrying her concealing the fact to the informant and her family members that he is already married. The appellant and his family members also assaulted and abused her by her caste name.

4. It is submitted by learned counsel for the appellant that the appellant is innocent and has falsely been implicated in the present case. The appellant has clean antecedent. Learned counsel for the appellant further submitted that the FIR has been lodged with inordinate delay without any reasonable explanation. Further learned counsel submits that the informant /O.P. No. 2 became face book friend and on 20.03.2023 she met the appellant at Buxar Station with her relatives, who taken him in a room, taken signature on blank paper, his clothes were disrobed, taken photograph with informant and demanded Rs. 5 lacs and for that occurrence, prior to lodging the present FIR, a complaint had been filed by the appellant against the informant and his family members for extortion and other allied offences. The appellant is working on the post of Constable in the Indian Army posted at Nagaland.



5. Learned Special Public Prosecutor for the State as well as learned counsel for the respondent no.2 opposed the prayer for anticipatory bail application and submits that there is direct allegation against the appellant of committing rape on informant which is serious in nature.

6. An offence is punishable under Section 376 of the I.P.C. if the offence of rape is established in terms of Section 375 which sets out the ingredients of the offence. In the present case, the second description of Section 375 alongwith Section 90 of the I.P.C. is relevant which deals with consent.

7. The law is well settled that where the promise to marry is false and the intention of the maker at the time of making the promise itself was not abide by it but to deceive the woman to convince her to engage in sexual relations, there is 'misconception of fact' that vitiate the woman's consent. The allegation in the present case is that the petitioner had given a promise to informant which at the inception was false and on that basis the informant/ O.P. No. 2 was induced in a sexual relationship with appellant.

8. In the facts and circumstances of the case as well as submissions of the learned counsel for the parties, I am not inclined to enlarge the appellant on anticipatory bail. The prayer



for anticipatory bail to the appellant is hereby rejected. The appeal is devoid of merit.

7. Accordingly, this appeal is dismissed.

(Sunil Dutta Mishra, J)

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