

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.70409 of 2023

Arising Out of PS. Case No.-406 Year-2022 Thana- BAKHARI District- Begusarai

Md Taufiq @ Tauhik Son Of Md. Shakeel @ Md. Sikander R/O Village-
Chakhamid, Ward No. 4, P.S.- Bakhri, District- Begusarai

... .. Petitioner/s

Versus

1. The State Of Bihar Patna
2. Roksar Praveen Khatoon Daughter Of Md. Arsad Ali R/O Village-
Chakhamid, Ward No. 2, P.S.- Bakhri, District- Begusarai

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Manoj Kumar, Advocate

For the Opposite Party/s : Mr. Anuj Kumar Shrivastava, APP

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

2 07-11-2023 Heard Mr. Manoj Kumar, learned counsel appearing
on behalf of the petitioner and the learned Additional Public
Prosecutor for the State.

2. The petitioner apprehends his arrest in connection
with Bakhri P.S. Case No. 406 of 2022, registered for the
offences punishable under Sections 376, 504 and 506/34 of the
Indian Penal Code and Section 3/4 of the Dowry Prohibition Act.

3. Allegedly, on the pretext of marriage, the petitioner
has established physical relationship with the O.P. No. 2 and
later on, he started demanding dowry and on account of non
fulfillment of the same, he denied to solemnize the marriage,
resulting into institution of the present case.



4. Learned counsel appearing on behalf of the petitioner submits that from the complaint case, which is the basis of the FIR, prima facie, it suggest that the occurrence first time took place in the month of June, 2020, which continued up to 08.07.2021 and, it is also evident that both the parties were major and consenting parties and, as such, there is no ingredient constituting the offence of rape. He further submits that in fact the parties have entered into an agreement to solemnize marriage, but in course of time, on account of some reasons, the same could not be settled and only in order to make pressure upon the petitioner, who is the propose bridegroom, the complaint case has been instituted, which was subsequently sent to the concerned police station under Section 156 (3) and thus, the present FIR. Reliance has also been made on judgments rendered by the Hon'ble Apex Court in the case of ***Sonu @ Subhash Vs. State of U.P.***, reported in ***(AIR 2021 SC 1405)*** and ***Maheshwar Tigga Vs. State of Jharkhand***, reported in ***(2020) 10 SCC 108***, that consensual relationship between the two major on the pretext of marriage cannot constitute rape.

5. On the other hand, learned counsel for the State opposed the pre-arrest bail application and submits that the O.P. No. 2 was subjected to physical exploitation at the hands of the



petitioner on the pretext of marriage and the complicity of the petitioner cannot be denied.

6. Regard being had to the submissions made on behalf of the parties and considering the fact that the parties are major and consenting to each other, coupled with the fair antecedent of the petitioner, as also the mandate of the Apex Court, let the petitioner above named be released on bail, in the event of his arrest or surrender before the court below within a period of four weeks from the date of receipt/production of a copy of this order, upon furnishing bail bonds of Rs.10,000/- (ten thousand) with two sureties of the like amount each to the satisfaction of the learned Chief Judicial Magistrate, Begusarai in connection with Bakhri P.S. Case No. 406 of 2022, subject to the conditions laid down in Section 438(2) Cr.P.C. with the further condition that one of the bailors shall be the own/close family members of the petitioner.

(Harish Kumar, J)

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