

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.72255 of 2022

Arising Out of PS. Case No.-31 Year-2022 Thana- MAHILA P.S. District- Saran

1. BHOLA KUMAR SHARMA S/o Tribhuwan Sharma @ Tribhuwan Thakur R/v- Doila, P.S.- Isuapur, District- Saran at Chapra
2. ARUN KUMAR SHARMA S/o Late Chandradeep Sharma R/v- Kharni Mathiya, P.S.- Goreya Kothi, District- Siwan

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Amit Narayan

For the Opposite Party/s : Mr. Sanjay Kumar Singh

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

2 29-04-2023 Heard learned Counsel for the petitioners and learned
Additional Public Prosecutor for the State.

This application, for grant of anticipatory bail, arises out of Mahila (Saran) Police Station Case No. 31 of 2022, dated 03.04.2022, disclosing offences under Sections 365/376/420/504/323/354-B/509 of the Indian Penal Code.

The prosecution case, as per the First Information Report based upon the written report of the informant, in nut shell, is that on the allurements of providing the informant a job at Ahmadabad, the petitioner no. 1 took the informant to Ahmadabad on 15.02.2022 and kept her in the rented house where petitioner no. 2 was residing from before and when petitioner no. 2 was not present in the rented house, petitioner no. 1 used to commit rape upon the informant and on



29.03.2022, they left the informant near dhala more, at Chapra. It has further been alleged that the petitioner no. 2 helped the petitioner no. 1 in committing rape upon the informant and also did not let her talk to her family members on mobile phone.

Learned Counsel for the petitioners submits that the petitioners are innocent and have falsely been implicated in this case due to village politics. He further submits that there was love affair between the petitioner no. 1 and the informant and the petitioner no. 1 has not committed rape upon her, which would be evident from the medical report of the informant (Annexure-3). He also submits that there was consensual physical relationship between the petitioner no. 1 and the informant and the informant had given consent for the physical relationship, as such, the offence alleged against the petitioners, under Section 376 of the Indian Penal Code, is not made out. In the First Information Report, the informant has stated that while the petitioner no. 2 was out from the rented premises, the petitioner no. 1 used to commit rape upon her; whereas, in the statement made under Section 164 of the Code of Criminal Procedure, 1973, the informant has stated that both the petitioners have committed rape upon her. He next submits that there is delay of five days in lodging the First Information



Report inasmuch as the informant returned to Chapra on 29.03.2022 and the First Information Report has been lodged on 03.04.2022.

I have heard learned Counsel for the parties concerned and have perused the impugned order.

From perusal of the impugned order, it transpires that the defence, which was taken by the petitioners before the learned Court below, is that the petitioners have falsely been implicated in this case to pressurize them not to demand the loan amount, which was taken by the father of the informant from the relative of the petitioners and before this Court, a defence has been taken that due to civil dispute pending between the parties, the First Information Report has been lodged against the petitioners for settling the personal grudge.

Learned Counsel for the petitioner has argued that there was consent on the part of the informant for the physical relationship, but from perusal of the First Information Report, it appears that the informant was given allurements for providing her a job and on the basis of the same, she accompanied the petitioner no. 2 to Ahmedabad, where petitioner no. 1 established physical relationship with the informant with the help and support of petitioner no. 2.



As per Section 90 of the Indian Penal Code, a consent is not a consent, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception.

From the First Information Report, it is evident that if at all there was a consent, the same was not voluntarily and must have been given due to the promise made by the petitioners for arranging a job for the informant.

Accordingly, I am not inclined to grant the petitioners privilege of anticipatory bail.

This application is, accordingly, dismissed.

However, if the petitioners surrender before the learned Court below within a period of four weeks from today, the learned Court below shall decide the regular bail application of the petitioners on its own merits and without being prejudice by the rejection of the present application for grant of anticipatory bail.

(Anil Kumar Sinha, J.)

Prabhakar Anand/-

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