

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.76188 of 2023

Arising Out of PS. Case No.-923 Year-2023 Thana- KHAJANCHI HAT District- Purnia

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KRISHANKANT KUMAR son of Chandra Bhushan Prasad Village-
Balwapar P.S.- Hilsa Dist- Nalanda A/P- Commando JC No-614, Special
Commando Special Force, Shyampur Munger

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Jitendra Kumar Giri, Advocate
For the Opposite Party/s	:	Mr. Uday Pratap Singh, APP
For the Informant	:	Mr. Kumar Manglam, Advocate

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

2 29-11-2023 Heard Mr. Jitendra Kumar Giri, learned counsel for

the petitioner and the learned APP for the State. The informant

is represented by Mr. Kumar Manglam, learned counsel.

2. The petitioner is apprehending his arrest in
connection with K. Hat P.S. Case No. 923 of 2023 registered for
the offences punishable under Sections 376, 377, 313, 420,
120B of the Indian Penal Code.

3. Allegedly the petitioner, on the pretext of
solemnization of marriage, established physical relationship
with the informant for pretty longtime and in course of the
relationship, the informant also got pregnant, however, the
petitioner in order to get rid of pregnancy administered some
medicine and due to which abortion took place, despite the



petitioner agreed to solemnize marriage with the informant , he finally refused to solemnize the marriage.

4. It is submitted on behalf of the petitioner that the informant has initially filed a complaint case, bearing Complaint Case No. 1479 of 2023, which was sent to the concerned police station and, accordingly, the present F.I.R. has been instituted. While referring to the F.I.R., he submits that from the narration made therein, it is evident that the relationship was developed way back in the year 2020 and at that time both the parties were major and the relationship was consensual and, thus, no case under Sections 376 and 377 of the I.P.C. is made out. He further submits that so far the allegation with regard to entering into an agreement is concerned, such agreement cannot be said to be a valid agreement in the eyes of law. Moreover, the petitioner is a Commando in Special Force and initially both the family were ready to solemnize the marriage, but on account of some differences, when the family of the petitioner refused to solemnize marriage, a complaint case has been filed, leading to institution of the present F.I.R.

5. Learned counsel for the petitioner lastly submitted that the Hon'ble Supreme Court in its various verdict held that voluntarily establishment of physical relationship with persons



having attained majority, on the pretext of marriage will not constitute an offence of rape if the same could not be finalized [Sonu @ Subhash Vrs. State of U.P., AIR 2021 SC 1405; Pramod Suryabhan Pawar Vrs. State of Maharashtra, (2019) 9 SCC 608].

6. On the other hand, learned APP for the State and the informant oppose the bail application and submit that the informant was subjected to sexual exploitation for a pretty long time on the pretext of marriage and this fact is also evident from the agreement executed by both the parties and thus the petitioner does not deserve the privilege of anticipatory bail. Further submission is made that the ingredients made in the F.I.R. not only constitute a criminal antecedent, rather the conduct of the petitioner is quite immoral. Learned counsel for the informant further added his submission that both the parties also appeared before the Mahila Helpline, Purnea on 24.05.2022 where the petitioner undertook that he will solemnize marriage with the informant, but again refused to do so. Thus, the intention of the petitioner was only to deceive the victim, right from inception.

7. Having heard the parties and taking note of the allegation made in the F.I.R., *prima facie*, it appears that both



the parties are major and they had been in relationship for a pretty long time, i.e. for more than 3 years, and in the said period there had never been any complaint on their part, either of the parties or their family members. Notwithstanding the fact, where promise to marry is false and intention of the maker at the time of making such promise itself was not to abide by it, but to deceive women to convince her to engage in sexual relation, there is misconception of facts that vitiates woman's consent, however, a breach of promise cannot be said to be a false promise. The Hon'ble Supreme Court also crystallized the issue in relation to consent of a woman by holding as follows:

“18. To summarise the legal position that emerges from the above cases, the “consent” of a woman with respect to Section 375 must involve an active and reasoned deliberation towards the proposed act. To establish whether the “consent” was vitiated by a “misconception of fact” arising out of a promise to marry, two propositions must be established. The promise of marriage must have been a false promise, given in bad faith and with no intention of being adhered to at the time it was given. The false promise itself must be of immediate relevance, or bear a direct nexus to the woman's decision to engage in the sexual act.”

8. This Court has also minutely perused the complaint filed by the victim, however, the materials prima facie does not



suggest, there was false promise right from inception as the relationship was with the consent of the family members and subsequently leading to physical relationship. Moreover, the consent of the victim was vitiated by a misconception of fact is yet to be proved. Further, in view of the fact, the petitioner is a soldier in Special Force, bearing fair antecedent, let the petitioner, named above, in the event of his arrest or surrender before the court below within four weeks from the date of receipt/production of a copy of this order, be released on bail on furnishing bail bonds of Rs.25,000/- (Rupees twenty five thousand) with two sureties of the like amount each to the satisfaction of learned Chief Judicial Magistrate, Purnea in connection with K. Hat P.S. Case No. 923 of 2023, subject to the condition as laid down under Section 438 (2) of the Cr.P.C. with the further condition that one of the bailors shall be the own/close relative of the petitioner.

(Harish Kumar, J)

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