

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.1257 of 2024**

Arising Out of PS. Case No.-3 Year-2024 Thana- MAHILA P.S. District- Sheohar

Vikash Kumar, aged about 26 years, Gender-Male, S/o Harikishor Sah, R/o village-Nagar Parishad Sheohar, Ward No. 15, P.S. - Sheohar, Distt. - Sheohar.

... .. Appellant

Versus

1. The State of Bihar.
2. Radhika Kumari, aged about 26 years (Female), D/o Ramekbal Ram, R/o village - Mohammadpur, Katsari, P.S. - Shyampur Bhatha, Distt. - Sheohar.

... .. Respondents

Appearance :
For the Appellant : Mr. N. K. Agrawal, Senior Advocate, Mr. Jai Ram Prasad, Advocate and Mr. Deepak Kumar, Advocate.
For the Respondent No. 2: Mr. Devendra Kumar, Advocate
For the State : Mrs. Usha Kumari 1, Spl. P.P.

CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

ORAL ORDER

2 29-03-2024 A counter affidavit has been filed on behalf of the respondent no. 2. Let it be kept on the record.

2. Heard learned senior counsel for the appellant, learned counsel for the respondent no. 2 and learned Spl. P.P. for the State.

3. 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 of



the appellant vide order dated 08.02.2024, passed by the learned Additional District and Sessions Judge-I-cum-Special Judge, Sheohar, in A.B.P. No. 25 of 2024 in connection with Sheohar Mahila P.S. Case of 03 of 2024, registered for the offences punishable under Sections 376, 313, 506 of the I.P.C. and Sections 3(1), (w), (i)/ 3(2), (va)/3(2) (v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Amendment Act, 2015.

4. The prosecution case, in brief, is that the informant was studying for graduation in the Sheohar since the year 2021 and apart from that she was also doing the work of 'Jivika Didi'. In course of that, the appellant came at the rented house of the informant through phone call with respect to the work in 'Jivika Didi'. Thereafter, he used to come regularly to the informant and also proposed to marry her. When she refused to do the same, he gave threatening to commit suicide and on the pretext of marriage, he forcibly established physical relationship with her since the year 2021 to 30th May, 2023, as a result of which, she became pregnant for two times. When he came to know about her pregnancy, he aborted her pregnancy. Whenever, she told him for performing marriage, he always refused to marry her by saying that he will marry her after performing of his



sister's marriage. It is further alleged that when she made more pressure to marry her, taking her in confidence, on 11.07.2023, he wrote all things to prove on a stamp paper and gave her and said that if he would not marry her she would take legal recourse against him. Hence, the informant could not make any complaint against him till today. It is further alleged that now the appellant refused to marry her by saying that she belongs to a scheduled caste category and his family members will not allow him to marry her. When she said about lodging of the case against him, he again on 19.09.2023 took three months time and said that he would marry her on 20.12.2023 and in that regard also executed an agreement, so, she could not make any complaint in the month of September, 2023.

5. It is submitted by learned senior counsel for the appellant that the appellant is quite innocent and has falsely been implicated in the present case due to ulterior motive. It is submitted that Section 376 of the I.P.C. is not made in the present case because both parties are major aged about 26 years and with consent to each other physical relationship was established between them. It is further submitted that the appellant is running a wholesale grocery shop and the informant used to come at the shop of the appellant and took articles for



‘Jivika Center’ and payment was made by way of account transaction and several payment was dues with the informant and when the appellant demanded the money then she offers to friendship and both parties fell in love. It is further submitted that on several times, the informant took loan from the appellant and when the appellant demanded the money, she gave threatening to suicide herself by eating rat kill poison. It is further submitted that the informant is suffering from mental disease and the appellant treated her at ‘Muzaffarpur Galaxy Hospital’ and when she was not cured then she was treated at ‘Sir Sundarlal Chikitsalaya, Kashi Hindu University, Chikitsa Vigyan Sansthan’, Varanashi and the doctor prescribed medicines for mental disease. It is further submitted that the alleged occurrence took place since the year 2021 to 30th May, 2023 and the F.I.R. was lodged on 11.01.2024 and during that period she does not make any complaint or F.I.R. against the appellant. It is further submitted that from the 164 statement, it is crystal clear that she was indulged herself with the appellant in sexual relation of her own will. It is further submitted that there is no castiest remark alleged against the appellant. No member of public was present at the relevant point of time of the alleged occurrence. Hence, no offence under the SC/ST Act



is made out against the appellant. Learned counsel for the appellant has further submitted that the informant and the appellant chose to have physical relationship of their own will. Learned counsel for the appellant placed reliance on the judgment in the case of *Mandar Deepak Pawar Vs. State of Maharashtra & Anr. (Criminal Appeal No. 442 of 2022)* in which “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 appellant has clean antecedent as stated in paragraph no. 3 of the memo of appeal.

6. Learned Spl. P.P. for the State as well as learned counsel for the respondent no. 2 have vehemently opposed the prayer for anticipatory bail of the appellant. Learned counsel for the respondent no. 2 by way of filing a counter affidavit has further submitted that the appellant has himself sworn an affidavit on 19.09.2023 without any fear and pressure among the panches/witnesses that he will solemnize marriage with the informant till 30.12.2023 with Hindu rites and custom and if he will not solemnize marriage then the respondent no. 2 will lodge case against him in Mahila Police Station, annexed as Annexure-1 to the counter affidavit filed on behalf of the



respondent no. 2. It is further submitted that the appellant has also executed an agreement stating therein that he belongs to Sheohar and came in contact with the respondent no. 2 in the year 2021 and both were willing to marry and established physical relationship continuously and she became pregnant in the year 2022 and on assurance of the appellant, she took medicine of abortion and she was aborted, in the year 2023, she became pregnant, again he gave medicine of abortion and she was aborted.

7. In view of the aforesaid facts and circumstances of the case as well as finding substance in the contention of the learned counsel for the appellant, the impugned order dated 08.02.2024, passed by learned Additional District and Sessions Judge-1-cum-Special Judge, Sheohar in A.B.P. No. 25 of 2024 in connection with Sheohar Mahila P.S. Case No. 03 of 2024, is set aside against the appellant. The criminal appeal is allowed.

8. Accordingly, the above named appellant, in the event of his arrest or surrender before the learned court below within a period of six weeks from today, be enlarged on anticipatory bail on furnishing bail bond of Rs. 20,000/- (Rupees Twenty Thousand) with two sureties of the like amount each to the satisfaction of the learned Additional District and



Sessions Judge-1-cum-Special Judge, Sheohar in connection with Sheohar Mahila P.S. Case No. 03 of 2024, subject to the condition as laid down under Section 438(2) of the Cr.P.C.

(Chandra Prakash Singh, J)

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