

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.23318 of 2024

Arising Out of PS. Case No.-6 Year-2024 Thana- MAHILA PS District- Darbhanga

Md. Abzal @ Md. Matin @ Md. Afzal Sheiekh @ Md. Abzal, aged about 27 years, Gender-Male, Son of Md. Iliyas, Resident of Village-Pirbakshpur Majargahi @ Pirbakshpu Majargachhi, P.S.-Baheri, Dist.-Darbhanga.

... .. Petitioner

Versus

1. The State of Bihar.
2. Nazrana Praveen, D/o Md. Kapil, R/O Vill-Peerbakaspur Majargahi, P.S.-Baheri, Dist-Darbhanga (Bihar).

... .. Opposite Parties

Appearance :

For the Petitioner : Mr. Baidyanath Prasad, Advocate
For the O.P. No. 2 : M/S. Apurv Harsh, Manu Tripurari, Raghu Raj
Pratap, Astitva and Hritik Anand, Advocates
For the State : Mrs. Sharda Kumari, A.P.P.

CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

ORAL ORDER

7 22-07-2024 Heard learned counsel for the petitioner, learned counsel for the opposite party no. 2 and learned A.P.P. for the State.

2. The petitioner seeks bail in connection with Mahila P.S. Case No. 06 of 2024 dated 12.01.2024 registered for the offences punishable under Sections 376 and 506/34 of the I.P.C.

3. As per the prosecution case, the petitioner had been pursuing the informant since 2023. In the month of April, 2023



at about 2.00 P.M., when the informant was returning from her school, the petitioner forcefully got her seated on his motorcycle by saying that he would drop at her home but he took her to elsewhere and committed rape on her by showing her knife and threatened her to kill. When she protested then he made false promise of marriage and repeated the occurrence of rape on her. In the meantime, she became pregnant and when she told him about her pregnancy, the petitioner assured her to get marry within one month. Thereafter, in the month of December, she told about the incident to her mother, upon which, her mother went to the family members of the petitioner where they were subjected to abuse and assault and were told to keep Rs. 10,000/- and abort the pregnancy.

4. Learned counsel for the petitioner has submitted that the petitioner is innocent and has falsely been implicated in this case. It is submitted that the petitioner was earning handsome amount from his own business in *Hyderabad* and belongs to a respectable family of the society and the informant and her family members wants to marry her with him anyhow hence, the present false case has been filed by the informant against the petitioner. The informant is a major and her date of birth is 06.03.2004 as per the School Leaving Certificate. It is



further submitted that from perusal of the F.I.R., itself, it appears that the informant herself has stated that first time the petitioner committed rape on her in the month of April, 2023 on the point of knife and thereafter he committed rape on her on several occasions i.e., sometime in his *room* and sometime in the *bari* in the night but she did not disclose the same to anyone till January, 2024, which showed that the informant was a consenting party, hence, no case under Section 376 of the I.P.C. is made out. It is further submitted that the date and time of the occurrence has not been mentioned in the *fardbeyan*. The informant in her statement recorded under Section 164 of the Cr.P.C., has stated that the petitioner has committed rape on her in the *bari*. The alleged occurrence took place on 10.04.2023 and the F.I.R. has been lodged on 12.01.2024 and the delay in lodging of the F.I.R., has not been explained by the prosecution. After investigation, the charge sheet has been submitted in the present case. Learned counsel for the petitioner has relied upon the judgment in the case of ***Manoj Kumar Das Vs. State of Bihar***, passed in ***Cr. Appeal (SJ) No. 1755 of 2017*** dated 12.01.2024, reported in ***2024(4) BLJ***, where in paragraph nos. 13 and 14 it has been held that:-

13. “From the above discussed facts appearing from the statements of prosecution witnesses,



one thing is quite clear that the F.I.R. of present matter was lodged with an intention to pressurize the appellant to marry the victim or to harass him when he and his family members refused to marry the victim”.

14. “After having discussed the prosecution’s evidences this court forms the opinion that the prosecution failed to establish before the trial court the first occurrence of alleged sexual assault and also did not succeed to prove the sexual relationship between the appellant and victim which was alleged to have been established by the appellant with victim on the basis of false pretext or assurance to marry the victim made by the appellant and there are serious contradictions, discussed in earlier paragraphs, in between the victim’s evidence, who is the most crucial witness of the prosecution, and the facts revealed by the victim herself in the F.I.R. and there are also serious contradictions among the statements of the prosecution witnesses regarding the relevant facts of the F.I.R., as discussed above, and the evidences available on the case record of the trial court are not just and sufficient for the conviction of the appellant regarding the alleged offence of rape hence, the impugned judgment and order convicting and sentencing the appellant for the charged offence punishable under Section 376 of the I.P.C. are set aside and the present appeal stands allowed.”

He has further relied upon the judgment in the case of *Lakshmana Naik Vs. State of Karnataka*, passed in Cr. Appeal No. 639 of 1998, dated 28.05.2004, reported in **2004 CRI. L.J. 3913**, wherein in paragraph nos. 13 and 14 it has been held that:-

13. “The Division Bench of this Court in the



case of State of Karnataka V. Anthonidas reported in ILR(2000) Kant 266, has dealt with an identical situation, wherein the accused had promised to marry a girl and for that reason she had agreed to have sex with him, ultimately resulting in her pregnancy. On facts, it is held that it does not constitute an offence of rape. In the case of Honayya v. State of Karnataka reported in ILR (2000) Kant 3336, the accused was convicted by the trial court holding that the consent for sexual intercourse was due to misconception or misrepresentation as the accused had promised to marry. In respect of that case this Court was held that if a full grown girl consents to sexual intercourse on a promise of marriage and continues to indulge in such activity until she becomes pregnant, it is an act of promiscuity on her part and not an act induced by misconception of fact”.

14. “In the case on hand it is only two days prior to the birth of the child the complaint came to be lodged on the allegation that the accused made false promise of marriage. Therefore, in my opinion, the fact of the accused does not attract the ingredient of Section 375, I.P.C.”

The petitioner has clean antecedent as stated in paragraph no. 3 of the bail petition. He is in custody in this case since 18.01.2024.

5. Learned A.P.P. for the State and learned counsel for the opposite party no. 2 have vehemently opposed the bail petition of the petitioner. Learned counsel for the opposite party no. 2 has further submitted that the petitioner committed rape on the informant at the point of knife despite her protest.



Thereafter, the petitioner made false promise of marriage with a view to save his skin from the alleged offence. In the meantime, the victim became pregnant due to repeated occurrence. Lastly the petitioner denied to marry the victim. He has relied upon the judgment in the case of ***Karthi @ Karthick Vs. State Represented by Inspector of Police, Tamil Nadu***, reported in ***(2013) 12 S.C.C. 710***, passed in ***Cr. Appeal No. 601 of 2008***, ***decided on July 1,2013*** in which the Hon'ble Apex Court has held:- Sections 376 and 417 of the I.P.C.-Rape and Cheating-Obtaining consent for having sex by exercising deceit i.e., false promise of marriage-Cannot be legitimate defence to exculpate accused-Promise by accused to marry prosecutrix after committing rape- Thereafter, accused repeatedly engaged in consensual sexual intercourse with prosecutrix, at different places, on false promise of marriage-Eventual refusal by accused to marry-Prosecutrix divulging incident to her family-Credible testimony of prosecutrix and other witnesses-Conviction for rape and cheating, confirmed.”

6. Considering the aforesaid facts and circumstances of the case as well as the heinous nature of allegation against the petitioner, this Court is not inclined to grant bail to the petitioner and the same is rejected in connection with Mahila P.S. Case



No. 06 of 2024, pending in the court of learned S.D.J.M.,
Darbhanga.

7. The application stands rejected.

(Chandra Prakash Singh, J)

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