

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.34040 of 2024

Arising Out of PS. Case No.-166 Year-2023 Thana- BELSAND District- Sitamarhi

Md. Firdaush Hayat @ Md. Firdaush, S/o Md. Tamanne @ Md. Tamanne Ali
R/o vill - Dariyapur, P.S. - Belsand, Distt. - Sitamarhi

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. N. K. Agrawal- Sr. Advocate Mr. Ashok Kumar Jha- Advocate
For the State	:	Mr. Binod Kumar- A.P.P.
For the Informant	:	Mr. Pushpendra Kumar Singh- Advocate

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

- 2 08-05-2024 1. Heard learned senior counsel for the petitioner, learned counsel for the informant and learned APP for the State.
2. The petitioner seeks bail in anticipation of his arrest in a case registered for the offences punishable under Sections 376, 323, 504, 506 and 34 of the Indian Penal Code.
3. The learned senior counsel for the petitioner submits that the petitioner has been falsely implicated in the instant case by the informant. It is next submitted that petitioner and the informant are consenting adults and both on their own volition came into a relationship and even



established physical relation. It is next submitted that it becomes very easy to allege when the relationship comes out in public that the petitioner was raping the informant on pretext of marriage. It is next submitted that from perusal of the allegation as alleged in the F.I.R., it would manifest that the same is cryptic and does not inspire confidence as it lacks in essential details. It is further submitted that even presuming what has been alleged is true without admitting, then the relationship was consensual and the petitioner and the informant were in a relationship for the last more than three years, as such, it cannot be presumed that the informant was taken a ride for such a long period of time. It is further submitted that right from the beginning the relationship was clear that there was no promise of marriage. It is next submitted that it was only when petitioner and the informant were involved in a physical relation in a bamboo clamp when the family members of the informant somehow came to know and gathered at the place of occurrence and thereafter, the instant F.I.R. came to be instituted. It is further submitted that rape cannot continue



in eternity and period of three years is a longtime to realize whether there was any genuine promise of marriage or not.

4. The learned senior counsel next relies on the judgment of the Hon'ble Supreme Court in the case of **Maheshwar Tigga vs. State of Jharkhand reported in (2020) 10 SCC 108**, submits that the Hon'ble Supreme Court based on the facts of the case recorded:-

"10. They were both smitten by each other and passions of youth ruled over their minds and emotions. The physical relations that followed was not isolated or sporadic in nature, but regular over the years. The prosecutrix had even gone and resided in the house of the appellant. In our opinion, the delay of four years in lodgement of the FIR, at an opportune time of seven days prior to the appellant solemnizing his marriage with another girl, on the pretext of a promise to the prosecutrix raises serious doubts about the truth and veracity of the allegations levelled by the prosecutrix. The entire genesis of the case is in serious doubt in view of the admission of the prosecutrix in cross-examination that no incident had occurred on 9-4-1999.

14. Under Section 90 IPC, a consent given under a misconception of fact is no consent in the eye of the



law. But the misconception of fact has to be in proximity of time to the occurrence and cannot be spread over a period of four years. It hardly needs any elaboration that the consent by the appellant was a conscious and informed choice made by her after due deliberation, it being spread over a long period of time coupled with a conscious positive action not to protest. The prosecutrix in her letters to the appellant also mentions that there would often be quarrels at her home with her family members with regard to the relationship, and beatings given to her."

5. It is thus submitted that can rape continue for so long without the prosecutrix realizing that the accused does not have any intention to marry. It is next submitted that it is difficult to fathom that the prosecutrix over a prolong period time was not able to realize that promise of marriage was false from the beginning or there was a possibility of breach of promise.

6. It is submitted that at the cost of repetition that both petitioner and the informant were consenting adults and they came together on their own volition and established physical relation and it was only when they were caught



indulging in the act by the family members of the informant that the instant F.I.R. came to be instituted.

7. Learned A.P.P. along learned counsel appearing on behalf of the informant opposes the anticipatory bail application, but then, are not in a position to rebut the submission of the learned senior counsel that rape cannot continue in eternity and that the petitioner and the informant were consenting adults.

8. The learned counsel appearing on behalf of the opposite party no.2 further submits that in the event, if anticipatory bail is granted to the petitioner, in that event, he may abscond, on which the learned senior counsel submits that petitioner will not abscond rather will cooperate in the investigation.

9. Considering the submissions made by the learned counsel for the petitioner, the petitioner, above-named, in the event of his arrest or surrender before the learned Court below within a period of six weeks, is directed to be released on bail on his furnishing bail-bonds in the sum of Rs. 10,000/- (Rupees Ten Thousand) with two sureties of



the like amount each to the satisfaction of Sri Sonu Saurav,
J. M. First Class, Sitamarhi in connection with Belsand P. S.
Case No.166 of 2023, subject to the conditions laid down
under Section 438(2) of the Cr.P.C.

10. The application stands allowed.

(Satyavrat Verma, J)

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