

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.40175 of 2024

Arising Out of PS. Case No.-11 Year-2024 Thana- MAHILA PS District- Darbhanga

Md. Chand @ Md. Chand Alam, Son Of Md. Zaheer @ Md. Zahoor, Resident
of Village - Narayanpur, P.S. - Manighachhi, District - Darbhanga

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Ms. Shama Sinha, Advocate
		Ms. Asmita, Advocate
		Ms. Shreya, Advocate
For the Opposite Party/s :		Ms. Pushpa Sinha.1, APP

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

2 03-07-2024 Heard Ms. Shama Sinha along with Ms. Asmita and

Ms. Shreya, learned counsels appearing on behalf of the

petitioner and Ms. Pushpa Sinha, learned APP appearing on

behalf of the State.

2. The petitioner apprehends his arrest in connection

with Mahila P.S. Case No. 11 of 2024 registered under Sections

376, 323, 379 and 506/34 of the Indian Penal Code.

3. As per the allegation made in the FIR, the

informant developed relationship with the petitioner, in absence

of her husband, who had gone outside the State for earning

livelihood. She continued her relationship, outside the marriage,

with the petitioner for nearly ten years and she was blessed with

two male children, as a result of co-habitation. The informant

had two children from her legally wedded husband. The allegation is of sexual exploitation on promise of marriage and of giving birth to two children.

4. Learned counsel appearing on behalf of the petitioner submits that from the allegation made in the FIR, the informant has admitted that she has at her own developed relationship with the petitioner and such relationship is not acceptable in the society, which resulted into co-habitation from which she gave birth to two children. Thereafter, she lodged the present FIR, alleging that she was exploited sexually on the promise of marriage. Learned counsel has referred the law laid down by the Apex Court in case of **Naim Ahmed Vs. State (NCT of Delhi), 2023 SCC Online SC 89** and **Prashant Bharti Vs. State (NCT of Delhi) (2013)9 SCC 293**, to contend the fact that the informant had betrayed her husband and as a result of the relationship with the petitioner, she gave birth to two children. She herself went to live along with the petitioner (accused) during the subsistence of marriage with her husband. At no stretch of imagination, such relationship developed between the petitioner and the informant can hold the petitioner guilty of having committed rape with her.

5. Learned APP for the State vehemently opposed the

prayer for grant of pre-arrest bail.

6. Having considered the rival submissions made on behalf of the parties, this Court finds it gainful to quote para 21 of *Naim Ahamed (supra)*, which is as follows:

“21. In the instant case, the prosecutrix who herself was a married woman having three children, could not be said to have acted under the alleged false promise given by the appellant or under the misconception of fact while giving the consent to have sexual relationship with the appellant. Undisputedly, she continued to have such relationship with him at least for about five years till she gave complaint in the year 2015. Even if the allegations made by her in her deposition before the court, are taken on their face value, then also to construe such allegations as ‘rape’ by the appellant, would be stretching the case too far. The prosecutrix being a married woman and the mother of three children was matured and intelligent enough to understand the significance and the consequences of the moral or immoral quality of act she was consenting to. Even otherwise, if her entire conduct during the course of such relationship with the accused, is closely seen, it appears that she had betrayed her husband and three children by having relationship with the accused, for whom she had developed liking for him. She had gone to stay with him during the subsistence of her marriage with her husband, to live a better life with the accused. Till the time she was impregnated by the accused in the year 2011, and she gave birth to a male child through the loins of the accused, she did not have any complaint against the accused of he having given false promise to marry her or having cheated her. She also visited the native place of the accused in the year 2012 and came to know that he was a married man having children also, still she continued to live with the accused at another premises without any grievance. She even obtained divorce from her husband by mutual consent in 2014, leaving her three children with her husband. It was only in the year 2015 when some disputes must have taken place between them, that she filed the present complaint. The accused in his further statement recorded under Section 313 of Cr. P.C. had stated that she had filed the complaint as he refused to fulfill her demand to pay her huge amount. Thus, having regard to the facts and circumstances of the case, it could not be said by any stretch of imagination that the prosecutrix had given her consent for the sexual relationship with the appellant under the misconception of fact, so as to hold the appellant guilty of having committed rape within the meaning of Section 375 of IPC.”

I find that the petitioner has made out a case to be released on anticipatory bail.

7. Learned District Court is directed to release the petitioner on anticipatory bail, in the event of his/her arrest or surrender before the learned Court below within a period of four weeks from today, on furnishing bail bond of Rs. 10,000/- (Ten thousand) with two sureties of the like amount each, to the satisfaction of learned Sub-Divisional Judicial Magistrate, Darbhanga in connection with Mahila P.S. Case No. 11 of 2024, subject to the condition as laid down under Section 438(2) of the Cr.P.C.

(Purnendu Singh, J.)

Ashish/-
saurabh.kr/-

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