

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.41353 of 2024

Arising Out of PS. Case No.-28 Year-2024 Thana- THAKURGANJ District- Kishanganj

Sartaz @ Md. Sartaz Alam, S/O- Mohimuddin, Resident Of Village- Babandangi Ps- Thakurganj Dist- Kishanganj.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s :	Mr. Md Jubair Ansari
For the Opposite Party/s :	Mr. Chandra Bhushan Prasad- A.P.P.
	Mr. Sunil Kumar
	Mr. Pankaj Kumar

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

3 19-08-2024 Heard learned counsel for the petitioner, the learned counsel appearing on behalf of 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 Section 376 of the Indian Penal Code.

3. The learned counsel for the petitioner submits that the petitioner is a person with clean antecedent and the informant alleges that her mother died when she was a child and is in relationship with the petitioner for the last five years. Further, informant always desisted from entering into a physical relation, but petitioner kept calling and talking to



her from his mobile no.9934956229 and always promise to marry her and thereafter, on promise of marriage, the petitioner established physical relation 6-7 times on account of which, she became pregnant, but petitioner got her pregnancy aborted on 10.03.2024 by making her consume pills. Further, on 14.03.2024, in absence of her father, petitioner came and dragged her to an orchard and raped her thrice by gagging her mouth by cloth. Further, on alarm, Md. Karim came when petitioner fled, but Md. Karim saw that Mushtaque and Anwar were also present.

4. The learned counsel for the petitioner submits that from bare perusal of the allegations as alleged in the F.I.R., it would manifest that the same does not inspire confidence for the reason that it is not a case of rape, but is of a relationship based on consent. It is further submitted that informant herself alleges that she was in relationship with the petitioner for the last five years and it does not appear probable that the informant, who is a major, would not have realized in these five years that she was being taken for a ride and the petitioner never intended to marry



her. It is next submitted that when such relationship sours, false cases are instituted alleging rape. It is also submitted that though the informant alleges that petitioner established physical relation 6-7 times, but then, does not disclose the place where such occurrence took place. It is further submitted that had the petitioner established relation, then at least in the F.I.R., informant would have disclosed where they established the relationship. It is also submitted that allegation of rape appears to be an exaggerated allegations for the reason that it does not appear probable that when petitioner was having relationship with the informant, then the petitioner would have dragged the informant to an orchard for committing rape. It is also submitted that though it appears that the informant by way of after thought also implicated Mushtaque and Anwar, when she does not even remotely allege that when petitioner was committing rape they were also present, but then, with the help of Md. Karim, she falsely implicates as it is alleged that Karim saw Mushtaque and Anwar at the place of occurrence, which further cast an aspersion on the case of the prosecution.



5. The learned counsel for the petitioner next relies on the judgment in the case of ***Maheshwar Tigga vs. State of Jharkhand (2020) 10 SCC 108*** and submits that the Hon'ble Supreme Court based on the facts of the case recorded at Paras-10 and 14:-

"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 solemnising 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."

6. It is next submitted that rape cannot continue in eternity without the prosecutrix realizing that the accused does not have any intention to marry, it is submitted that it is difficult to fathom that the prosecutrix over a prolonged period of time was not able to realize that promise of marriage was false from the beginning or there is a possibility of breach of promise.

7. It is further submitted that the rape cannot continue in eternity without the prosecutrix realizing that the accused does not have any intention to marry. It is also submitted that it is difficult to fathom that the prosecutrix over a prolonged period of time was not able to realize that promise of marriage was false from the beginning or there was a possibility of breach of promise. It is also submitted that petitioner will not abscond rather will cooperate in the investigation.

8. The learned counsel for the informant as well as learned A.P.P. Sri Chandra Bhushan Prasad opposes the anticipatory bail application, but then, are not in a position to rebut the submission of the learned counsel appearing on behalf of the petitioner that the informant does not disclose in the F.I.R. any material which could satisfy the Court that



the petitioner established physical relations forcefully.

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 the learned Chief Judicial Magistrate, Kishanganj in connection with Thakurganj P. S. Case No.28 of 2024, subject to the conditions laid down under Section 438(2) of the Cr.P.C.

10. The application stands allowed.

11. However, it is made clear that in the event, if any application is filed by the Investigating Officer before the learned trial Court bringing to its notice that petitioner, despite giving assurance to this Court, is not cooperating in the investigation or is not presenting himself as and when required, the learned trial Court shall be at liberty to cancel the bail bonds of the petitioner after recording reasons.

12. Let a copy of this order be sent to the



concerned Police Station through the learned trial Court.

(Satyavrat Verma, J)

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