

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.51259 of 2024

Arising Out of PS. Case No.-328 Year-2023 Thana- TARAIYA District- Saran

Pradeep Gupta, Son of Sunil Gupta R/o Vill- Baniya Hasanpur, P.S.- Taraiya
Distt.- Saran

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Shekhar Harshvardhan, Advocate.
For the State	:	Mr. Binod Kumar, APP.
For the Informant	:	Mr. Wasi Mohammad, Advocate.

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

2 21-08-2024 Heard Mr. Shekhar Harshvardhan, learned counsel appearing on behalf of the petitioner; Mr. Binod Kumar, learned APP for the State and Mr. Wasi Mohammad, learned counsel for the informant.

2. The petitioner seeks pre-arrest bail in connection with Taraiya P.S. Case No. 328 of 2023 registered for the offence punishable under Sections 341, 323, 376, 313 and 504/34 of the Indian Penal Code.

3. As per the allegation made in the F.I.R., the petitioner had forcibly raped the informant for two years while she used to go to attend natural call. It has further been alleged that the informant became pregnant and the petitioner refused to the marital proposal given by the mother of the informant.

4. Learned counsel appearing on behalf of the



petitioner submitted that the informant has admitted that she was in love relationship with the petitioner for two years and as a result of the said relationship, the informant had conceived is falsified from the examination of the informant by the doctor who has opined that the age of the informant is between 16 to 18 years and she was not found pregnant nor there is a fresh evidence of sexual intercourse. Learned counsel further submitted that the petitioner admits that he was in relationship with the informant for past two years and he denies the allegation that he had ever established any sexual relationship with the informant. The petitioner's family refused matrimonial offer given on behalf of the informant's family on the ground that the petitioner is more conscious about his career being only aged about 21 years. Learned counsel further submitted that otherwise also no offence has been committed by the petitioner even considering the fact that informant was minor at the time of alleged incidence and she has not denied the fact that she was not in relationship with the petitioner. Learned counsel in support of his argument and claim has relied on the recent judgment of the Apex Court in the case of **Naim Ahmed Vs. State (NCT of Delhi), 2023 SCC Online SC 89** and further submitted that at the time the petitioner and the informant were



in relationship, even considering the fact that they were minor, they were facing psychological or physical change in their body and unaware of the consequences of the rigors of POCSO Act, even if they have established any relationship, same will not amount to any offence. However, in the present case, admittedly, the day the informant has lodged the F.I.R., she was a major and on mere conjecture and surmises, the petitioner has been implicated in a false case.

5. Mr. Wasi Mohammad, learned counsel has tendered his appearance on behalf of the informant and submits that the consent of a minor is not consent and even the judgment which the petitioner has relied in the case of **Naim Ahmed (supra)** will not be of any help to the petitioner considering the fact that the day petitioner has committed wrong with the informant she was minor and the petitioner has lured and deceived the informant by refusing to marry with her.

6. Having considered the rival submissions made on behalf of the parties, as well as, the fact that the day F.I.R. has been lodged, the informant was major and she has admitted that she was in relationship with the petitioner and on refusal by the family members of the petitioner to marry with the informant, it appears that the F.I.R. has been lodged against the petitioner on



the alleged allegation that at the time the informant had conceived she was minor, but the medical report of the doctor reveals that the informant had not conceived and there was no recent evidence of sexual intercourse and both were admittedly in relationship for two years, I am of the opinion that the petitioner has made out a case to be released on pre-arrest bail.

7. The petitioner, above named, is directed to be released on pre-arrest bail, in the event of his arrest or surrender before the 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 Additional Chief Judicial Magistrate, Saran at Chapra in connection with Taraiya P.S. Case No. 328 of 2023, subject to the condition as laid down under Section 438(2) of the Cr.P.C.

8. At this stage, the only observation can be made by this Court is that both the parties are major and they can well understand their own interest.

9. The bail application stands disposed of.

(Purnendu Singh, J)

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