

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.44558 of 2024

Arising Out of PS. Case No.-138 Year-2023 Thana- HASANPUR District- Samastipur

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DIPAK KUMAR PASWAN @ DIPAK PASWAN SON OF MANTUN
PASWAN VILLAGE- SAKARDIHAR WARD NO. 04, P.S.- HASANPUR,
DISTT.- SAMASTIPUR

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Sadanand Roy

For the Opposite Party/s : Mr. Rabindra Kumar

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CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

- 2 19-08-2024 1. Heard learned counsel for the petitioner and learned
A.P.P. for the State.
2. The petitioner apprehends his arrest in a case
registered for the offences punishable under Section 376 of the
Indian Penal Code.
3. Learned counsel for the petitioner submits that
petitioner is a person with clean antecedent and the informant
alleges that petitioner for the last four years on pretext of
marriage is establishing physical relation on account of which
she became pregnant and petitioner got the pregnancy aborted,
further she came to know that petitioner is getting married on
02.07.2023 elsewhere.
4. Learned counsel for the petitioner submits that



petitioner has been falsely implicated in the instant case by the informant, it is next submitted that the relationship in between the petitioner and the informant was consensual with no promise of marriage. 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.”

5. 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. The learned counsel next submits that the petitioner will not abscond rather will co-operate in the investigation to prove his innocence.

6. Learned A.P.P. for the State opposes the prayer for anticipatory bail of the petitioner.

7. 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 trial court within a period of six weeks from today, be released on anticipatory bail on furnishing bail bonds of Rs. 10,000/- (Rupees Ten Thousand) with two sureties of the like amount each to the satisfaction of the learned trial court where the case is pending/successor court in connection with Hasanpur P.S.



Case No. 138 of 2023 subject to the conditions as laid down under Section 438 (2) of the Cr.P.C.

8. However, it is made clear that in the event if the Investigating Officer of the case files an application before the learned Trial Court bringing to its notice that petitioner despite giving assurance to this Court is not co-operating in the investigation or not presenting himself as and when required, in that event the learned Trial Court shall be at liberty to forthwith cancel the bail bonds of the petitioner after recording reasons.

9. Let a copy of this order be sent to the concerned P.S. through the learned Trial Court.

10. Accordingly, the instant anticipatory bail application stands allowed.

(Satyavrat Verma, J)

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