

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.46885 of 2024

Arising Out of PS. Case No.-212 Year-2024 Thana- BUDDHACOLONY District- Patna

SUJEET KUMAR S/O UPENDRA YADAV Resident of Village- Dabor, P.S-
Konch, District- Gaya, Bihar -824118.

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Opposite Party/s

Appearance :

For the Petitioner/s :	Mr. P.N. Shahi, Sr. Advocate
	Mr. Kuldeep Thakur, Advocate
	Mr. Abhishek Kumar Pandey, Advocate
	Mr. Aman Raj, Advocate
For the Opposite Party/s :	Mr. Ganesh Prasad Singh, A.P.P.

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

3 04-09-2024 Heard learned counsel for the petitioner, learned
A.P.P. for the State and learned counsel appearing on behalf of
the informant.

2. The petitioner apprehends his arrest in a case
registered for the offence punishable under Section 376 of the
Indian Penal Code.

3. Learned counsel for the petitioner submits that
petitioner is a person with clean antecedent.

4. The informant alleges that she is posted as a
Constable in Patna District Force and petitioner was also posted
as a Constable. It is further alleged that the petitioner for the last
two years on pretext of marriage was establishing physical
relation. It is next alleged that the petitioner on pretext of



marriage of his sister used to delay his marriage with the informant. It is further alleged that on 18.04.2024 Tilak ceremony of petitioner was performed and the marriage was fixed for 26.04.2024 with a girl who is also a Constable in the police force, accordingly, on coming to know that the marriage of the petitioner has been fixed the family members of the informant went to the house of the petitioner to confront him but the petitioner fled away and his family members refused to talk.

5. Learned counsel for the petitioner submits that petitioner has been falsely implicated in the present case by the informant. It is further submitted that it is not in dispute that petitioner and the informant were known to each other being Constable in the police force. It is next submitted that physical relation was established but then there was no promise of marriage, rather the relationship was purely consensual.

6. Learned counsel for the petitioner next relies on an order of the Hon'ble Supreme Court in the case of **Maheshwar Tigga Vs. The State of Jharkhand** reported in **(2020) 10 SCC 108** and submits that the Hon'ble Supreme Court based on the facts of the said case recorded at para 10 and 14 which is as follows:-

“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.”

7. Learned counsel further submits that rape cannot continue in eternity 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 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.

8. Learned counsel next submits that whenever a consensual relationship sours, a false case of rape is alleged. It is further submitted that the instant case came to be instituted after the marriage of the petitioner was fixed which amply demonstrates that petitioner never promised the informant that the relationship was on pretext of marriage.

9. Learned A.P.P. for the State and the learned counsel appearing on behalf of the informant opposed the prayer for anticipatory bail of the petitioner but then are not in a position to rebut the submissions of the learned counsel appearing on behalf of the petitioner that rape cannot continue in eternity without the prosecutrix realizing that the accused does not have any intention to marry, when informant is an educated lady.

10. At this stage, learned counsel appearing on behalf of the informant submits that if the privilege of anticipatory bail is granted to the petitioner, in that event, he may tamper with the evidence on which learned counsel appearing on behalf of the petitioner assures this Court that petitioner will not abscond nor will tamper with the evidence, rather will cooperate in the investigation to prove his innocence.

11. Considering the submissions made by the learned



counsel for the petitioner, let the petitioner above-named, in the event of his arrest or surrender before the learned Court below 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 court below where the case is pending/successor court in connection with Buddha Colony P.S. Case No. 212 of 2024, subject to the conditions as laid down under Section 438 (2) of the Cr.P.C.

12. However, it is made clear that if the investigating officer of the case files an application bringing to the notice of the learned trial court that petitioner, despite giving assurance to this Court, is not cooperating in the investigation, the learned trial court shall be at liberty to cancel the bail bonds of the petitioner.

(Satyavrat Verma, J)

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