

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.53865 of 2024

Arising Out of PS. Case No.-65 Year-2024 Thana- NOWKOTHI GARHPURA District-
Begusarai

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Sushant Kumar @ Raman Kumar Rakesh, son of Rambilas Mochi @
Ramvilash ram Village- Maheshwara W.No-2, Ps- Nawkothi Dist- Begusarai

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Shashank Shekhar
For the Opposite Party/s : Mr.Ashok Kumar Singh

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CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

2 29-08-2024 Heard learned counsel for the petitioner 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 has antecedent of one case and the informant
alleges that petitioner on pretext of marriage has been
establishing physical relation since 2018 and now, has refused to
marry.

4. The learned counsel for the petitioner submits that
from perusal of the allegation as alleged in the FIR, it would
manifest that the allegations are vague, cryptic and lacks in



essential detail. It is also submitted that the allegations have been deliberately kept vague with a view to plug the loopholes during the course of investigation. It is further submitted that the relationship was completely consensual and when the same soured the present false case came to be instituted.

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 solemnizing 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. Learned A.P.P. opposes the anticipatory bail application.

8. 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 Ms. Kanchan Rani, the learned Judicial Magistrate, First Class, Begusarai in connection with Nowkothi P. S. Case No.65 of 2024, subject to the conditions laid down under Section 438(2) of the Cr.P.C.

9. The application stands allowed.

(Satyavrat Verma, J)

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