

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.59210 of 2024

Arising Out of PS. Case No.-34 Year-2024 Thana- MAHILA P.S. District- Bhagalpur

Aman Raj S/o- Suresh Mandal Vilage-Naya Nagar Rani Diyara, P.S.-
Buddhuchak, District-Bhagalpur

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Sharda Nand Mishra

For the Opposite Party/s : Mr. Arun Kumar Pandey

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

3 24-09-2024 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 Sections 376 and 506 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, her neighbour, for the last five years on pretext of marriage, is establishing physical relation, further when informant asked him to marry, he refused and asked her to marry elsewhere and also assured that he will provide financial support and threatened if she will pressurize him for marriage, her family would face dire consequences.

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 from perusal of the



allegation as alleged in the F.I.R., it would manifest that petitioner and the informant are neighbours. It is also submitted that the relationship was purely consensual without any promise of marriage. It is next submitted that it absolutely does not stand to reason that the informant, for five years, did not realize that petitioner never intended to marry her. It is also submitted that the allegation as alleged in the FIR does not inspire confidence.

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 was a possibility of breach of promise. The learned counsel next submits that petitioner will not abscond rather will co-operate in the investigation to prove his innocence.

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

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 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 Mahila P.S. Case No. 34 of 2024 subject to the conditions as laid down under Section 438 (2) of the Cr.P.C.

9. 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 is 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.

10. Let a copy of this order be sent to the concerned police station through the learned Trial Court.

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

(Satyavrat Verma, J)

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