

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.63875 of 2024

Arising Out of PS. Case No.-376 Year-2024 Thana- KAHALGAON District- Bhagalpur

Nilesh Kumar @ Nikku S/O Rajkumar Gupta Resident of Village-
Sadanandpur Baisa, P.S- Kahalgaon, Distt.- Bhagalpur.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Y.C. Verma, Sr. Advocate Mr. Ravi Ranjan Dixit, Advocate Mr. Surabhi Suman, Advocate
For the opposite party	:	Mr. Rahul Kumar, Advocate
For the State	:	Ms.Nirmala Kumari, APP

CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL ORDER

- 3 16-12-2024 1. Heard Mr. Y.C. Verma, learned senior Advocate
for the petitioner and Ms.Nirmala Kumari, learned APP for the
State.
2. Petitioner apprehends his arrest in connection with
Kahalgaon P.S. Case No. 376 of 2024 dated 25.06.2024
registered for the offences punishable under Sections 417, 376,
313 and 506 of the Indian Penal Code.
3. As per the prosecution story, two years ago, the
petitioner came to the informant's house and forcibly established
physical relationship with her and when the informant
threatened to tell her parents about the incident then the
petitioner made a false promise of marriage and established



physical relations with the informant on the pretext of marriage. The petitioner also recorded a video of them indulged in the act. Thereafter, the informant became pregnant, the petitioner gave her medicine, which resulted in the abortion of the child. On 10.06.2024, when the informant asked him about marriage then he threatened to circulate the aforesaid video. Hence, the FIR.

4. The main submissions advanced by learned senior counsel appearing for the petitioner are that admittedly, the informant who is said to be the victim was 20 years old when she lodged the FIR and from the facts of the FIR, it is clearly established that there was consensual relationship in between the informant and the petitioner and the same remained in force for about more than two years and during that period, the informant remained silent, so, the alleged offence under Section 376 of the I.P.C. is not made out in this matter against the petitioner. In support of the above submissions, learned senior counsel has placed reliance upon the judgment of the Hon'ble Apex Court in the case of *Ansaar Mohammad Vs. State of Rajasthan and another* reported in AIR 2022 SC 3478 and the relevant paragraph nos. 2 and 3 upon which the reliance has been placed are being reproduced as under:

“ 2. It is the admitted case of the complain- ant that she was in a relationship with the appellant for a



period of four years. It is admitted by Mr. Himanshu Sharma, learned counsel for the respondent No.2/complainant that when the relationship started, she was 21 years of age.

3. In view of the said fact, the complainant has been staying willingly with the appellant and had the relationship. Therefore, now if the relationship is not working out, the same cannot be a ground for lodging an FIR for the offence under Section 376(2)(n) IPC.”

It is further submitted that in respect of the allegations of making obscene MMS video of that victim, there is no certification of the alleged electronic evidence, so, no offence is made out under the I.T. Act though in this regard, no section has been inserted in the FIR.

5. On the other hand, learned counsel appearing for the informant has vehemently opposed the bail prayer and submits that at the time of the commission of the alleged occurrence, the informant was 18 years old and she has fully supported the allegation levelled by her in the FIR in her statement recorded under Section 161 and Section 164 of the Cr.P.C. and the investigation is still pending against the petitioner.

6. Learned APP has also opposed the bail prayer of this petitioner.

7. Heard both the sides and perused the FIR and the



case diary of this case. Though, as per the allegations made in the FIR, the informant remained in relationship with the petitioner but as per her allegations, the petitioner firstly established relationship with her by force and thereafter, continued the same relationship on the pretext to marry her and made a MMS video of her and thereafter, by threatening to circulate her MMS video, continued to have relationship with the informant and when she became pregnant by the petitioner, he aborted her. In view of the said allegations it does not appear that the informant was having love affair with the petitioner, so, the principle laid down by the Hon'ble Apex Court in the above cited judgment has no application and further, the investigation is still pending in this matter and the victim has also supported her allegations before the Judicial Magistrate, in my opinion, it is not a fit case for anticipatory bail to the petitioner. Accordingly his prayer stands rejected.

(Shailendra Singh, J)

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