

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.62424 of 2024

Arising Out of PS. Case No.-19 Year-2024 Thana- MAHILA P.S. District- Bhagalpur

Diwakar Mandal, Son of Late Satya Narayan Mandal @ Suresh Mandal,
Resident of village-Sungathiya, Police Station-Kharik, District-Bhagalpur.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Krishna Prasad Singh, Sr. Adv. Dr. Manoj Kumar, Adv.
For the Opposite Party/s	:	Mr. Ajay Kumar Jha, APP
For the Informant/s	:	Mr. Swapnil Kumar Singh, Adv.

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

3 20-11-2024 Heard Mr. Krishna Prasad Singh, learned Senior Advocate for the petitioner and learned Additional Public Prosecutor for the State. The informant appears through Mr. Swapnil Kumar Singh, learned Advocate.

2. The petitioner seeks regular bail, who is in custody in connection with Mahila P.S. Case No. 19 of 2024 registered for the offences punishable under Sections 376, 341, 323 and 504/34 of the Indian Penal Code.

3. Based upon the written report, the prosecution alleges that on the pretext of marriage, the petitioner established physical relationship with the informant and when she became pregnant, the petitioner forcibly got her to undergo abortion by administering some medicine. It is further alleged that when the



informant went to the house of the petitioner, then all the family members of the petitioner assaulted and threatened her with dire consequences, if she discloses the incidence to anyone.

4. Learned Senior Advocate for the petitioner drawing the attention of this Court to the FIR, contended that admittedly the informant is major and there had been relationship for the last two years. Their prolonged relationship clearly speaks that it was a consensual relation and no force has ever been utilized. The date on which the petitioner on account of some reason refused to solemnize arraignment, the present FIR has been instituted, is the contention of learned Senior Advocate. Placing reliance upon the judgment rendered by the Hon'ble Apex Court in the cases of **Sonu @ Subhash Kumar v. State of Uttar Pradesh and Another [Cr. Appeal No. 233 of 2021]** and **Shambhu Kharwar v. State of Uttar Pradesh and Another [Cr. Appeal No. 1231 of 2022]**, learned Senior Advocate submitted that the Hon'ble Supreme Court also ruled that in case of a consensual relationship between the parties even on assurance of marriage but on account of some reasons, the marriage could not be solemnized, no offence of rape is said to have been constituted unless the prosecution is able to prove that the promise of marriage was false at the inception. Now, the



petitioner has been incarcerated since 04.06.2024 having fair antecedent and the investigation of the crime is complete.

5. On the other hand, learned APP for the State as well as learned Advocate for the informant vehemently opposed the bail application and submitted that apart from the fact that on assurance of marriage, the victim was subjected to sexual exploitation, it is also the fact that if the petitioner would not solemnize marriage with the victim, her entire life will be ruined. During the course of investigation, the witnesses have supported the prosecution case and the factum of abortion.

6. Regard being had to the submissions made on behalf of the parties and considering the prolonged relationship between the petitioner and the victim, who are major, coupled with the ruling of the Hon'ble Apex Court in **Sonu @ Subhash Kumar** (supra) and **Shambhu Kharwar** (supra), let the petitioner, named above, be released on bail on furnishing bail bonds of Rs.20,000/- (Twenty thousand) with two sureties of the like amount each to the satisfaction of learned Sub-Divisional Judicial Magistrate, Naugachia (Bhagalpur) in connection with Mahila P.S. Case No. 19 of 2024, subject to the condition that one of the bailors will be the close relatives of the petitioner with further conditions which are as follows:-



(i) The petitioner will cooperate in conclusion of the trial.

(ii) He will remain present on each and every date of trial till disposal of the case.

(iii) He will not try to tamper with the evidence or intimidate the witnesses to delay the disposal of trial.

(iv) In the event of default of two consecutive dates without any cogent reason, his bail bonds will liable to be cancelled.

7. While granting bail to the petitioner, this Court directs the jurisdictional Court to take an effort after calling upon the petitioner and the victim in Chambers’ to settle the matter, if possible.

(Harish Kumar, J)

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