

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.68644 of 2023

Arising Out of PS. Case No.-24 Year-2023 Thana- MAHILA P.S. District- Araria

Md. Azad @ Azad Son Of Md. Tahrool Village- Kakorwa W.No-5, Ps- Palasi
Dist- Araria

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

Appearance :

For the Petitioner : Mr. Raj Kumar, Advocate

For the Opposite Party : Mr. Ram Anurag Singh, APP

**CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH
SINGH**

ORAL ORDER

7 17-12-2024 Heard learned counsel for the petitioner and
learned A.P.P for the State.

2. The petitioner has preferred this application for grant of regular bail in connection with Araria (Mahila) P.S. Case No. 24/2023 dated 05.07.2023 registered for the offence punishable u/s 341, 323, 376, 504 and 506 read with Section 34 of the Indian Penal Code and Section 4 of the POCSO Act.

3. As per the prosecution case, the petitioner is alleged to have committed rape on the informant forcibly. On being objected, the petitioner promised to marry her. Further, when the informant became pregnant all the



accused persons surrounded her and the co-accused, Sajauddin took out a bottle containing medicine and forcibly put it in the informant's mouth and said that once abortion was done the matter would be settled.

4. Learned counsel for the petitioner has submitted that the petitioner is innocent and has falsely been implicated in this case. As per the Medical Report, no injury was found on any part of the body and the age of the victim is assessed above 20 years. The petitioner has no concern with the alleged occurrence. The petitioner has clean antecedent as stated in para 3 of the bail petition. The petitioner is in custody since 23.08.2023.

5. Learned A.P.P. for the State has vehemently opposed the bail petition of the petitioner. The victim in her statement recorded u/s 164 of the Cr.P.C. has supported the prosecution case. As per the DNA Test, on the basis of observation it is sufficient to conclude that the source of exhibit marked-A (Source-blood sample of Sahista Praveen) and exhibit marked-C (Source- Blood sample of Md. Azad) are found to be Biological Parents of the source of exhibit marked-B (Source-Blood sample of victim child Sahjad). He has relied upon the judgment in the case of ***Karthy @ Karthick Vs. State Represented by Inspector of Police, Tamil***



Nadu, reported in *(2013) 12 S.C.C. 710*, passed in *Cr. Appeal No. 601 of 2008, decided on July 1, 2013* in which the Hon'ble Apex Court has held:- Sections 376 and 417 of the I.P.C.-Rape and Cheating- Obtaining consent for having sex by exercising deceit i.e., false promise of marriage-Cannot be legitimate defence to exculpate accused-Promise by accused to marry prosecutrix after committing rape- Thereafter, accused repeatedly engaged in consensual sexual intercourse with prosecutrix, at different places, on false promise of marriage-Eventual refusal by accused to marry-Prosecutrix divulging incident to her family-Credible testimony of prosecutrix and other witnesses-Conviction for rape and cheating, confirmed."

6. Considering the aforesaid facts and circumstances of the case as well as the specific and heinous nature of offence against the petitioner, this Court is not inclined to grant bail to the petitioner and the same is rejected in connection with Araria (Mahila) P.S. Case No. 24/2023 pending in the court of learned Addl. Sessions Judge 6th-cum-Special POCSO Judge, Araria.

7. This application stands rejected.

(Chandra Prakash Singh, J)

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