

Arising Out of PS. Case No.-196 Year-2023 Thana- TEGHRHA District- Begusarai

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Gaurav Kumar
For the Opposite Party/s : Mr. Anand Kishore Choudhary
For the O.P. No. 2 : Mr. Jai Prakash Singh

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

4 11-03-2024

1. Heard learned counsel for the petitioner and learned

APP for the State along with learned counsel for the O.P. No. 2.

2. The petitioner apprehends his arrest in a case registered for the offence punishable under Section 376 of the Indian Penal Code.

3. The learned counsel for the petitioner submits that petitioner has antecedent of one case but then in the said case police after investigation exonerated the petitioner of the allegation. It is next submitted that petitioner has been falsely implicated in the instant case by the informant with an allegation that her marriage with the petitioner was fixed about 12 years ago and on pretext of marriage, the petitioner established physical relations with the informant on 25.07.2022, 12.12.2022 and on 11.06.2023 and later he refused to marry the informant after he



became a government teacher.

4. The learned counsel for the petitioner next submits that the statement of the informant was recorded under Section 164 Cr.P.C. wherein she has supported the case of prosecution but then has given a different version and has disclosed her age as 31 years. It is further submitted that from perusal of the allegation as alleged in the FIR, it would manifest that the marriage of the informant was fixed with the petitioner about 12 years back but then the marriage did not take place. It is also submitted that the relationship was purely consensual. It is also submitted that two consenting adults came together and even established physical relation and when the relationship soured, the present false case came to be instituted. It is next submitted that the medical report of the informant also does not corroborate rape.

5. The learned counsel next submits that under Section 90 of the IPC, a consent given under a misconception of fact is no consent in the eyes of the law but then misconception of fact is to be in proximity of time to the occurrence and cannot be spread over a period of 12 years.

6. The learned counsel next submits that whatever happened in between the petitioner and the informant was purely consensual and the informant in order to make out a case falsely alleges that physical relationship was established on three specific



dates. It is further submitted that petitioner vehemently denies the allegation of rape.

7. Learned A.P.P. for the State along with learned counsel for the O.P. No. 2 opposes the prayer for anticipatory bail of the petitioner, but are not in a position to rebut the submission of the learned counsel for the petitioner that misconception of fact has to be in proximity of time to the occurrence and cannot be spread over a period of 12 years.

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 Teghra P.S. Case No. 196 of 2023 subject to the conditions as laid down under Section 438 (2) of the Cr.P.C.

(Satyavrat Verma, J)

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