

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.75034 of 2023

Arising Out of PS. Case No.-235 Year-2023 Thana- AAJAM NAGAR District- Katihar

Md. Mohtasim Alam @ Md. Motasim, Son Of Yamin Hussain @ Md. Yamin
R/O Village- Ekchanna, P.S.- Barsoi, District- Katihar

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Mozma Shaheen D/O Masihur Rahman, C/O Fazre Alam Presently R/O
Village- Khaza Nagar, P.S.- Azamnagar, District- Katihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s :	Mr.Rajendra Prasad Sah
For the Opposite Party/s :	Mr.Rajendra Nath Jha
	Mr. Md. Qumrul Hoda

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

4 02-04-2024 1. Heard learned counsel for the petitioner, learned
counsel for the opposite party no.2 and learned APP for the
State.

2.The petitioner seeks bail in anticipation of his
arrest in a case registered for the offences punishable under
Sections 376, 313, 307, 354(B), 504, 506 and 120(B) of
the Indian Penal Code and Section 4 of the POCSO Act.

3.The learned counsel for the parties jointly
submitted that the case was referred for mediation, but
then, the mediation failed.

4.The learned counsel for the petitioner submits



that a consensual relationship has been given a colour of rape. It is further submitted that petitioner was running a school in which the informant was appointed as a Teacher on account of which, relationship in between the two developed. It is further submitted that the relationship was consensual, but then, the present F.I.R. came to be instituted with an allegation that petitioner committed rape. It is next submitted that the F.I.R. emanates from a complaint and the informant as complainant alleges that she was teaching in the school of the petitioner and was given a room where she stayed when on 20.01.2021, petitioner entered in her room at 10.00 P.M. and forcefully committed rape, but then, was able to convince the informant not to complain as he would marry her, as such, the informant also did not inform anyone about the said occurrence fearing defamation. It is next alleged that in March, 2021, she became pregnant, but the petitioner got medicine from the shop and asked her to consume based on which, she got aborted. Thereafter, on 15.06.2021, the petitioner and the informant got married. It is next alleged that thereafter, the petitioner requested the



informant not to disclose to anyone about her marriage as she was a minor below 18 years of age and later, also started abusing her badly. It is further alleged that she gave information of her marriage to her maternal grandfather and villagers. Thereafter, on 27.08.2022, she along with the petitioner went to her matrimonial home and gave information of the occurrence to the father and mother of the petitioner. Thereafter, the father of the petitioner, on coming to know about the occurrence, tried to kill her by strangulating her. It is further alleged that a Panchayati was convened in which an amount of Rs.4 Lacs was imposed upon the petitioner by way of fine. It is also alleged that the petitioner along with his brother conspired to take the informant to Delhi for selling her to a prostitution house.

5. The learned counsel for the petitioner submits that from bare perusal of the allegations as alleged in the F.I.R., it would manifest that the same does not inspire confidence. It is further submitted that no doubt, the case was instituted under the POCSO Act, but then, informant was a Teacher in the school of the petitioner where she was



teaching, as such, she was not a minor rather a major and the relationship in between the petitioner and the opposite party no.2 was consensual and with consent, physical relationship was established. It is further submitted that even from perusal of the allegation as alleged in the F.I.R., it would also manifest that no force or coercion was applied on the petitioner for marrying the informant rather the petitioner on his own volition performed his marriage with the informant which amply demonstrates that both the petitioner and the informant were in love. It is next submitted that it absolutely does not stand to reason that once the marriage was performed and the relationship was consensual, why the informant instituted the instant case alleging rape. It is further submitted that petitioner still is willing to keep the informant with honour and dignity, but then, the informant for reasons best known is not willing to accompany the petitioner to her matrimonial home on the premise that she suspects that she may be sold for prostitution when that is not a fact, nor from the allegations as alleged it even gets remotely reflected that petitioner or



his family members including his brother committed any act which could raise suspicion that they intended to sell the informant for prostitution. It is further submitted that in the mediation proceeding, the informant was willing for a one time settlement for Rs.18 Lacs, but the petitioner was not in a position to pay, more so, when petitioner is not disputing his marriage with the informant and is willing to keep her with honour and dignity.

6.The learned counsel for the petitioner next submits that from the conduct of the informant, it appears that it was a ploy to involve the petitioner first in a relationship then to get married and thereafter to seek one time settlement.

7. Learned A.P.P. along with the learned counsel appearing on behalf of the opposite party no.2 vehemently rebuts the submission made on behalf of the learned counsel for the petitioner, but then, the learned counsel appearing on behalf of the opposite party no.2 fairly submits that the informant is willing for a one time settlement in the event, the petitioner pays Rs.18 Lacs.



8. Off late, it is being seen that cases relating to rape on pretext of marriage is flooding the Courts and if the Courts even act in a mechanical manner, the day is not far when such cases will burden the Courts with unnecessary litigations. At this stage, the learned counsel for the petitioner submits that the petitioner will not abscond rather will cooperate in the investigation.

9. 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 Court below within a period of six weeks, is directed to be released on bail on his furnishing bail-bonds in the sum of Rs. 10,000/- (Rupees Ten Thousand) with two sureties of the like amount each to the satisfaction of the learned A.D.J.-VII-cum-Special Judge POCSO, Katihar in connection with Azamnagar (Salmari O.P.) P. S. Case No.235 of 2023, subject to the conditions laid down under Section 438(2) of the Cr.P.C.

10. The application stands allowed.

11. However, it is made clear that in the



event, if any application is filed by the Investigating Officer before the learned trial Court bringing to its notice that petitioner, despite giving assurance to this Court, is not cooperating in the investigation in that event, the learned trial Court shall be at liberty to cancel the bail bonds of the petitioner after recording reasons.

(Satyavrat Verma, J)

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