

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.74019 of 2024

Arising Out of PS. Case No.-348 Year-2024 Thana- DARIYAPUR District- Saran

Aslam Ali @ Md. Aslam Ali Son of Md. Rustam Ansari @ Late Rustam Ali
R/O Vill.- Dharahar Khurd, Bhairapur, P.S.- Amnour, Dariyapur, Dist.- Saran.

... .. Petitioner

Versus

1. The State of Bihar Bihar
2. Farjana Khatoon D/O Afjal ALi R/O Vill.- Bhairapur, P.S.- Dariyapur, Dist.- Saran.

... .. Opposite Party

Appearance :

For the Petitioner : Mr. Saroj Kumar Singh, Advocate
For the Opposite Party : Mrs. Sharda Kumari, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

ORAL ORDER

2 23-10-2024 Heard learned counsel for the petitioner and learned
Additional Public Prosecutor for the State.

2. The petitioner is apprehending his arrest in connection with Dariyapur P.S Case No. 348/2024 dated 23.06.2024 registered for the offence punishable u/s 376 read with Section 34 of the Indian Penal Code and Sections 4 and 6 of the POCSO Act.

3. As per the prosecution case, the petitioner is alleged to have committed rape on the informant who is minor on the pretext of marriage due to which the informant became pregnant and gave birth to a child. Further, the petitioner and the co-accused persons also demanded Rs. 5 lacs as dowry.



4. Learned counsel for the petitioner has submitted that the petitioner is innocent and has falsely been implicated in this case. There was love affair between the parties. Both the parties chose to have physical relationship. The petitioner has no criminal antecedent as stated in para 3 of the bail petition.

5. Learned A.P.P. for the State has vehemently opposed the prayer for anticipatory bail of the petitioner. Learned counsel for the opposite party no. 2 has further submitted that the petitioner committed rape on the informant. Thereafter, the petitioner made false promise of marriage with a view to save his skin from the alleged offence. In the meantime, the victim became pregnant due to repeated occurrence and gave birth to a child. The victim is a minor girl. The victim in her statement recorded u/s 164 of the Cr.P.C. has supported the prosecution case. Learned A.P.P has relied upon the judgment in the case of *Karthi @ 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
and the heinous nature of allegation against the petitioner, I am
of the view that no case for grant of anticipatory bail is made
out. The petition is rejected and the petitioner is directed to
surrender to the Court below within six weeks from the date of
this order and the Court below may consider the prayer of the
bail of the petitioner in accordance with law and on its own
merits without being prejudice by this order.

(Chandra Prakash Singh, J)

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