

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.80939 of 2023

Arising Out of PS. Case No.-78 Year-2023 Thana- KUNAU LI District- Supaul

VISHNU KUMAR SAH, aged about 21 years, Male, S/O OMPRAKASH SAH R/O VILLAGE- KUNAU LI BAZAR, P.S- KUNAU LI, DISTT.- SUPAUL. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Ms. Geeta Kumari, Advocate
Mr. Suraj Kumar, Advocate
For the Opposite Party/s : Mr.Akhileshwar Dayal, APP

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

2 10-01-2024 Heard Ms. Geeta Kumari along with Mr. Suraj Kumar, learned counsels appearing on behalf of the petitioner and Mr. Akhileshwar Dayal, learned APP for the State.

2. The petitioner seeks pre-arrest bail in connection with POCSO Case No. 80 of 2023 arising out of Kunauli P.S. Case NO.78 of 2023 dated 14.08.2023 registered for the offence(s) punishable under Sections 376, 493, 504,509, 354(B), 323 of the Indian Penal Code and Sections 4 and 8 of POCSO Act.

3. Initially, a complaint case bearing Complaint Case (POCSO) No.10 of 2023 was lodged by the victim, who is the complainant thereafter on the said basis, the FIR was lodged. The allegation is that the petitioner had lured her on the pretext of marriage and established sexual relationship while she was 16 years old, a minor, and thereafter they also performed



marriage on 21.11.2021. However, due to some quarrel for some reason, the complaint was lodged after the local *Thana* refused to lodge FIR on 09.07.2023.

4. Mrs. Geeta Kumari along side Mr. Suraj Kumar, learned counsels appearing on behalf of the petitioner submitted that petitioner and the complainant were in good relationship which remained for a long period of time and thereafter they performed marriage as per their own wish and desire after the victim had attained majority. The allegation of repeated rape cannot be sustained as during the said period, the victim was in relationship with the petitioner at her own will and in this regard, learned counsel has relied upon a recent judgment of the Apex Court in the case of ***Pramod Suryabhan Pawar Vs. State of Maharashtra & Anr.*** reported in ***(2009) 9 SCC 608*** and submits that in the said case, the Apex Court had quashed the entire FIR.

5. Learned APP for the State vehemently opposed the prayer for grant of pre-arrest bail.

6. Having considered the rival submissions made on behalf of the parties and from perusal of the complaint, it appears that the complainant and the petitioner were in the relationship and thereafter they entered into marriage and after



that certain dispute arose and as per the advise of her parents, she lodged the complaint. Recently, in the case of ***Pramod Suryabhan Pawar (Supra)***, the Apex Court has not found such allegation of repeated rape when the complainant and the petitioner were in relationship and during the said period, no complaint was made and in the present case, it is admitted that parties have solemnized marriage and thereafter certain dispute arose, petitioner has prima facie, made out a case to be released on pre-arrest bail.

7. The petitioner, above named, is directed to be released on pre-arrest bail, in the event of his arrest or surrender before the Court below within a period of four weeks from today, on furnishing bail bond of Rs. 10,000/- (Rupees Ten Thousand) with two sureties of the like amount each to the satisfaction of learned Additional District and Sessions Judge-VI-cum-Special Judge (POCSO), Supaul in connection with POCSO Case No. 80 of 2023 arising out of Kunauli P.S. Case No.78 of 2023 subject to the conditions as laid down under Section 438(2) of the Cr.P.C.

Sanjay/-

(Purnendu Singh, J)

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