

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.85044 of 2023

Arising Out of PS. Case No.-220 Year-2021 Thana- AURAI District- Muzaffarpur

Md. Irfan Son Of Md. Rizwan Resident Of Village - Kokilwara, P.S. - Aurai,
District - Muzaffarpur

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mrs. Vaishnavi Singh, Advocate

For the Opposite Party/s : Ms. Rina Sinha, APP

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

2 18-01-2024 Heard Mrs. Vaishnavi Singh, learned counsel

appearing on behalf of the petitioner and the learned Additional

Public Prosecutor for the State.

2. The petitioner apprehends his arrest in connection
with Aurai P.S. Case No. 220 of 2021, registered for the
offences punishable under Sections 376, 313, 323, 504, 506 and
120(B)/34 of the Indian Penal Code.

3. The allegation against the petitioner is of sexual
exploitation of the informant, on the pretext of marriage.

4. From the narratives of the FIR, it is evident that
while the informant was going with the petitioner in the late
night, he allowed shelter in his house, where he forcibly
committed rape upon her on 20.10.2019. Thereafter, allegedly



he has been continuously committed such act. On protest being made, the victim was threatened and further the petitioner extended his promise for marriage. Having come to know this incident, the parents of the petitioner also assured for marriage but forcibly got her abortion done. However, later on refused to solemnize marriage, even when Panchayati was made, leading to filing of the complaint case on 24.12.2020, which was sent to the concerned police station under Section 156(3) of the Cr.P.C., resulting into lodging of the present FIR.

5. It is submitted on behalf of the petitioner that even as per the FIR, the incidence took place on 20.10.2019, however, thereafter, they remained in the relationship for about one year, but neither any complaint or any FIR has been instituted. It is submitted that both the parties are major and consenting party, however, only on account of refusal on the part of the petitioner to marry with the informant, this FIR has instituted. In the aforesaid premise, learned counsel for the petitioner also made reliance upon a judgment rendered by the Hon'ble Supreme Court in the case of *Maheshwar Tigga Vs. The State of Jharkhand*, reported in *2020 (10) SCC 108*. Having relied upon the aforementioned judgment, she submitted that no offence under Section 376 of the Indian Penal Code is made



out in the present facts. Further submission has been made that the very institution of the FIR, under Section 156 (3) is in complete defiance of the guidelines framed by the Hon'ble Apex Court in the case of *Priyanka Srivastava and Anr. Vs. State of Uttar Pradesh and Ors.*, reported in *2015 (6) SCC 287*. She next submits that there is no medical report, which suggest that she was subjected to any sexual assault or there had ever been abortion. She lastly submits that the petitioner is a man of fair antecedent and he undertakes that he will fully co-operate in the proceeding of the Court.

6. On the other hand, learned counsel for the State opposed the pre-arrest bail application and submits that from the FIR, it is evident that the victim was subjected to sexual exploitation, on the pretext of marriage and right from very inception, there was no intention on the part of the petitioner to solemnize marriage and, as such, the reliance made on behalf of the petitioner in the case of *Maheshwar Tigga (supra)* is not applicable.

7. Regard being had to the submissions made on behalf of the parties and considering the allegations levelled in the FIR, which, *prima facie*, suggest that both the parties are major and the relationship was consensual which lasted for



more than a year with conscious positive action not to protest, coupled with the fair antecedent of the petitioner, let the petitioner above named be released on bail, in the event of his arrest or surrender before the court below within a period of four weeks from the date of receipt/production of a copy of this order, upon furnishing bail bonds of Rs.10,000/- (ten thousand) with two sureties of the like amount each to the satisfaction of the learned Additional Sessions Judge-cum-Special Judge, POCSO, Muzaffarpur in connection with Aurai P.S. Case No. 220 of 202, subject to the conditions laid down in Section 438(2) Cr.P.C. with the further condition that one of the bailors shall be the own/close family members of the petitioner.

(Harish Kumar, J)

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