

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.84682 of 2023

Arising Out of PS. Case No.-80 Year-2023 Thana- MAHILA P.S. District- Patna

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Gaurav Kumar @ Chotu, Son Of Nirmal Kumar Singh, Resident Of
Pasiyabigha, P.S-Paliganj, Dist- Patna Presently Residing At Bhagera Ashram,
Magadh Colony, Kurji, P.S.-DIGH, Dist.- Patna

... .. Petitioner/S

Versus

The State Of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Bindhyachal Singh- Sr. Advocate Mr. Akash Raj- Advocate
For the Opposite Party/s :		Mr. Rabindra Kumar- A.P.P. Mr. Samir Kumar Mr. Abhimanyu Deo Mr. Saurav Singh Ms. Sapna Rani

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CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

- 4 24-06-2024 1. Heard learned senior counsel for the petitioner,

learned counsel for the informant 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, 506 and 34 of the Indian Penal Code.
3. The learned senior counsel for the petitioner

submits that the issue, which arises for consideration in the

present case is whether sexual intercourse with woman

amounts to rape, if consent of the prosecutrix was obtained by

a false promise of marriage within the meaning of Section 375



of the I.P.C. It is further submitted that obtaining consent for sexual intercourse on false promise of marriage is considered as misconception of fact within the meaning of Section 90 of the I.P.C. Thus, it is not considered as a valid consent in the eyes of law and hence, the accused would be charged under Section 375 of the I.P.C. as second explanation to Section 375 of the I.P.C. provides punishment of rape is sexual intercourse is done without victim's consent. It is thus submitted that law is clear that establishing physical relation on false promise of marriage amounts to rape.

4. The learned senior counsel for the petitioner next submits that law is not static rather is dynamic and with passage of time, the society is changing live-in-relationship, which was unthinkable about 40-50 years back is now slowly becoming the order of the day, marriage which was considered sacrosanct is breaking at the drop of the hat and the Courts are being flooded with matrimonial litigations. The day is not far when the Courts would be flooded with litigation of the present nature also.

5. It is next submitted that with rapid changes coming in the society, even the Courts have started taking a



different view towards Section 375 of the I.P.C. and have interpreted the term "consent" in a broader way. It is next submitted that when two consenting adults established physical relation, the same is not an offence, if there is an affirmative conscious and voluntary consent to engage in physical relation.

6. The learned senior counsel for the petitioner next relies on several judgments of the Hon'ble Supreme Court to buttress his arguments:- ***Dr. Dhruvaram Murlidhar Sonar vs. the State of Maharashtra and others reported in (2019) 18 SCC 191, Shambhu Kharwar vs. the State of U.P. and another reported in (2022) SCC Online SC 1032*** wherein the Hon'ble Supreme Court held that where two consenting adults entered into a consensual relationship, no offence under Section 376 of the I.P.C. is attracted as the crucial ingredients of rape as defined under Section 375 I.P.C. are absent.

7. The learned senior counsel next relies on the judgment of ***Maheshwar Tigga vs. State of Jharkhand reported in (2020) 10 SCC 108*** wherein the Hon'ble Supreme Court based on the facts of the case recorded at Para-10 and 14:-



"10. They were both smitten by each other and passions of youth ruled over their minds and emotions. The physical relations that followed was not isolated or sporadic in nature, but regular over the years. The prosecutrix had even gone and resided in the house of the appellant. In our opinion, the delay of four years in lodgement of the FIR, at an opportune time of seven days prior to the appellant solemnising his marriage with another girl, on the pretext of a promise to the prosecutrix raises serious doubts about the truth and veracity of the allegations levelled by the prosecutrix. The entire genesis of the case is in serious doubt in view of the admission of the prosecutrix in cross-examination that no incident had occurred on 9-4-1999.

14. Under Section 90 IPC, a consent given under a misconception of fact is no consent in the eye of the law. But the misconception



of fact has to be in proximity of time to the occurrence and cannot be spread over a period of four years. It hardly needs any elaboration that the consent by the appellant was a conscious and informed choice made by her after due deliberation, it being spread over a long period of time coupled with a conscious positive action not to protest. The prosecutrix in her letters to the appellant also mentions that there would often be quarrels at her home with her family members with regard to the relationship, and beatings given to her.”

8. It is next submitted that rape cannot continue in eternity without the prosecutrix realizing that the accused does not have any intention to marry. It is submitted that it is difficult to believe that the prosecutrix over a prolonged period of time was not able to realize that promise of marriage was false from the beginning or there was a possibility of breach of promise.

9. It is next submitted that in the present case, the



informant alleges that the petitioner on false promise of marriage for the last three years was exploiting the informant physically and even got her aborted and thereafter, switched of his mobile and also threatened her parents, friends, sister and sister in-law that he will make the photos and videos viral.

10. The learned senior counsel for the petitioner submits that from perusal of the allegation as alleged in the F.I.R., it would manifest that the relationship in between the petitioner and the informant continued for three years and thereafter, the instant F.I.R. came to be instituted. It is next submitted that both petitioner and the informant were working in a private firm and hence, were educated, as such, it cannot be presumed that informant did not realize that she was being cheated by the petitioner and continued in the relationships. It is submitted that since the relationship was in between two consenting adults and was in nature of a live-in-relationship, as such, it cannot be alleged that petitioner was physically exploiting the informant in name of marriage. It is further submitted that the informant got pregnant, but then, since the pregnancy within the parameters of law was terminable, as such, with consent of the informant and the petitioner, the



pregnancy was terminated by the doctor, which has also come during the course of investigation.

11. The learned senior counsel for the petitioner next submits that even presuming what is alleged is true without admitting, then in the nature of allegation as alleged in the F.I.R., it cannot be even remotely presumed that petitioner established physical relation with the informant on false promise of marriage rather what transpires is that the petitioner and the informant being major, entered into a relationship and the consent of the informant to establish physical relation was a conscious and informed choice made by her after due deliberation and when the relationship soured, the F.I.R. came to be instituted. It is next submitted relying on the case of the ***Maheshwar Tigga vs. the State of Jharkhand (Supra)*** that misconception of fact has to be in proximity of time to the occurrence and cannot be spread over a period of three years.

12. It is further submitted that as far as allegation of making photos and videos viral is alleged, the same has been alleged only with a view to give serious colour to the case as during the course of investigation, no



photographs or videos were seized.

13. The learned counsel for the informant as well as learned A.P.P. Sri Rabindra Kumar opposes the anticipatory bail application, but then, are not in a position to rebut the submission of the learned senior counsel for the petitioner that the relationship in between the petitioner and the informant was consensual. The learned counsel for the informant further submits that during the course of investigation, the police had investigated the doctor, who confirmed the abortion of the informant and handed over a letter to the police wherein both petitioner and the informant had signed, which amply demonstrates that the informant became pregnant on account of the relationship.

14. The said submission is rebutted by the learned senior counsel appearing on behalf of the petitioner and it is submitted that since the letter handed over to the police by the doctor contained the signature of both petitioner and the informant that amply demonstrates that both did not want the child, as such, gave consent for abortion.

15. At this stage, the learned counsel for the informant submits that in the event, if anticipatory bail



application is granted to the petitioner, the petitioner may abscond, on which the learned senior counsel submits that petitioner will not abscond rather will cooperate in the investigation.

16. Considering the submissions made by the learned senior 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 Ms. Kumari Priyanka, learned J. M., 1st Class, Patna in connection with Mahila P. S. Case No.80 of 2023, subject to the conditions laid down under Section 438(2) of the Cr.P.C.

17. The application stands allowed.

18. However, it is made clear that in the event, if any application is filed by the Investigating Officer of the case 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 and to take all coercive steps to ensure that
petitioner is behind bars.

19. Let a copy of this order be sent to the
concerned Police Station through the leaned trial Court.

(Satyavrat Verma, J)

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