

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.86221 of 2023

Arising Out of PS. Case No.-40 Year-2023 Thana- MAHILA P.S. District- Patna

Chandan Kumar @ Chandan Kumar Yadav S/O Shiv Kumar Yadav @ Shiv Kumar Chaudhary R/O Village- Asaon, Ps. Asaon, Distt. Siwan (BIHAR) At Present- Driver Of City, S.P Bhagalpur, Dist. Bhagalpur

... .. Petitioner/S

Versus

1. The State Of Bihar
2. Pushpanjali Kumari @ Kumari Pushpanjali Yadav @ Pushpanjali Devi W/O Sunil Yadav, D/O Gauri Shankar Yadav Village- Duha Bihra, Ps. Sikandarpur, Dist. Ballia, Pin-221717, At Present Metropolish Logistic Ltd. Rani Chakiya Marg, Behind Of By Pass Thana, Tent City Road, Ps. By Pass, Distt. Patna.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Arvind Kumar Pradhan
For the Opposite Party/s : Mr. Dr. Ajeet Kumar

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

- 4 25-04-2024 1. Heard learned Senior counsel for the petitioner Mr. N.K. Agrawal assisted by Mr. Arvind Kumar Pradhan and learned A.P.P. for the State along with learned counsel appearing on behalf of the O.P. No.2.
2. The petitioner apprehends his arrest in a case registered for the offence punishable under Sections 313, 323, 341, 376, 406, 420 and 498A of the Indian Penal Code.
3. The learned Senior counsel for the petitioner submits that the petitioner has been falsely implicated in the instant case by the informant. It is next submitted that what is not in dispute rather stands admitted is that the informant was



married from before but then she separated from her husband on the ground that he was mentally unbalanced. It is next submitted that the informant alleges that after she separated from her husband, the petitioner enticed her and brought her to Patna for marriage and thereafter both stayed together and indulged in physical relationship but later when the petitioner got a job with the police, he dumped the O.P. No.2. The learned Senior counsel next submits that since the O.P. No.2 was married from before as such she could not have married the petitioner in absence of seeking divorce from her first husband. It is further submitted that since the informant had not obtained divorce from her first husband as such she cannot allege that the petitioner on promise of marriage established physical relation. It is further submitted that it was a consensual relationship in between two consenting adults and when the relationship soured the present false case came to be instituted. It is also submitted that even if the petitioner would have wanted to marry the O.P. No.2 still he could not have married her for the reason that her earlier marriage was subsisting. It is next submitted that from perusal of the allegation as alleged in the F.I.R., it would manifest that the allegation does not even remotely suggest that the informant had filed any case before a court of competent jurisdiction



seeking divorce from her first husband on the ground of mental instability. It is also submitted that the relationship in between the petitioner and the O.P. No.2 started in the year 2019 and the F.I.R. came to be instituted in the year 2023, as such it cannot be alleged that the informant under misconception of fact gave consent on pretext of marriage. It is next submitted that misconception of fact has to be in proximity of time to the occurrence and cannot be spread over a period of 4 years. The learned Senior counsel at the cost of repetition submits that in absence of divorce, the O.P. No.2 could not have married the petitioner and she was aware of this fact and the relationship was completely consensual.

4. The learned APP along with learned counsel appearing on behalf of the O.P. No.2 opposes the anticipatory bail application of the petitioner but then are not in a position to rebut the submission of the learned counsel appearing on behalf of the petitioner that O.P. No.2 had not obtained divorce and in absence of divorce, she could not have married the petitioner as such it cannot be alleged that the petitioner on pretext of marriage established physical relation.

5. 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 from today, be released on anticipatory bail on furnishing bail bonds of Rs.10,000/- (Rupees Ten Thousand) with two sureties of the like amount each to the satisfaction of the learned trial court where the case is pending/successor court in connection with Mahila P.S. (Distt-Patna) Case No.40/2023, subject to the conditions as laid down under Section 438 (2) of the Cr.P.C.

(Satyavrat Verma, J)

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