

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.2550 of 2024

Arising Out of PS. Case No.-41 Year-2023 Thana- MAHILA P.S. District- Bhagalpur

Abhinash Kumar @ Avinash Kumar, Son Of Manoj Thakur Resident Of Vill-
Khangura Dih, P.O.- Khangura, P.S.- Katra, Distt- Muzaffarpur

... .. Petitioner/S

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr.Rajeev Kumar Singh Mr.Sitaram Prasad
For the State	:	Mr.Anuj Kumar Shrivastava
For the Informant	:	Mr.Manoj Kumar Jha

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

- 2 12-02-2024 1. Heard learned 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, 420, 379, 341, 323, 504, 506 and 34 of
the Indian Penal Code.
3. The learned counsel for the petitioner submits
that the petitioner is a person with clean antecedent and has
been falsely implicated in the present case and the informant
alleges that petitioner established physical relation on pretext
of marriage.
4. It is next submitted that from bare perusal of



the allegation as alleged in the F.I.R., it would manifest that the allegations are cryptic, vague and open ended. It is next submitted that the allegation deliberately is vague for the reason, so that the informant by way of afterthought during the course of investigation in her restatement could get the petitioner implicated. It is next submitted that it is not in dispute that petitioner and the informant were not in relationship, but then, two consenting adults came together and entered into physical relationship. It is also submitted that the petitioner and the informant were known since 2018 and the F.I.R. came to be instituted in the Year 2023, as such, it cannot be alleged that the petitioner based on misconception of fact had obtained consent of the informant on pretext of marriage for entering into physical relationship, even misconception of fact has to be in proximity with time to the occurrence alleged and in the present case, the relationship between the petitioner and the informant lasted for nearly more than five years.

5. The learned counsel for the petitioner next submits that even process under Section 82 Cr.P.C. has



been issued against the petitioner. It is next submitted that petitioner is not absconding from law, rather is seeking his remedy available in law and during pendency of the present anticipatory bail application, process under Section 82 Cr.P.C. has been issued, which amply demonstrates that both police and the learned trial Court in mechanical manner proceed. It is also submitted that the case has been instituted under Section 376 of the I.P.C., as such, it is a cognizable offence for which police does not require non-bailable warrant of arrest and process under Sections 82 and 83 Cr.P.C. for seeking arrest. It is next submitted that process under Sections 82 and 83 Cr.P.C. is issued for ensuring presence of the accused before the Court and not before the police.

6. Learned A.P.P. along with learned counsel for the informant rebuts the submission of the learned counsel for the petitioner, but then, are not in a position to rebut the submission of the learned counsel for the petitioner that the relationship was more than five years old and the allegation as alleged in the F.I.R. is cryptic, vague and open ended.



7. 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, is directed to be released on bail on his furnishing bail-bonds in the sum of Rs. 5,000/- (Rupees Five Thousand) with two sureties of the like amount each to the satisfaction of the learned Chief Judicial Magistrate, Bhagalpur in connection with Bhagalpur Mahila P. S. Case No.41 of 2023, subject to the conditions laid down under Section 438(2) of the Cr.P.C.

8. The application stands allowed.

(Satyavrat Verma, J)

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