

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.15120 of 2025

Arising Out of PS. Case No.-730 Year-2024 Thana- MADHAURAH District- Saran

=====

Basant Singh Rajpur @ Basant Singh Rajput @ Basant Kumar Singh, aged about 27 years (M), S/o- Vidyabhushan Singh, Resident of Village- Gandhi Nagar Station Road Pakahan, Police Station- Marhowrah District- Saran Chapra

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

=====

Appearance :

For the Petitioner/s	:	Mr.Brij Kishor Mishra, Advocate
For the Opposite Party/s	:	Mr.Rajiv Nayan, APP
For the informant	:	Mr. Bhavesh Kumar, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

4 03-09-2025 Heard Mr. Brij Kishor Mishra, learned counsel appearing on behalf of the petitioner; Mr. Rajiv Nayan, learned APP for the State and Mr. Bhawesh Kumar, learned counsel for the informant.

2. The petitioner seeks pre-arrest bail in connection with Marhowrah P.S. Case No. 730 of 2024 registered for the offence(s) punishable under Sections 75,78,351(2),352,3(5), of the BNS and Section 67 of IT Act.

3. As per the allegation made in the FIR, the petitioner has allegedly used expletive comment on the news clipping of the informant.

4. Learned counsel appearing on behalf of the



petitioner submitted that petitioner is innocent. He is a writer and poet. His social media was hacked and the news report was telecasted by one channel, namely, News Bihar IV, from 02.11.2024 onwards and he has no concern with the same. The said news made it public that the informant who is the principal of one school, namely, A.N.M. School, at Marhowarah, Saran was engaged in corrupt practice. He further submitted that there is no allegation of any explicit announcement on part of the petitioner in respect of any wrong comment against the informant and her daughter. At best, it can be said that the news contained the alleged malpractice adopted by the informant. Petitioner has clean antecedent. On these grounds, petitioner seeks to be released on pre-arrest bail.

5. Mr. Bhavesh Kumar, learned counsel, has tendered his appearance on behalf of the informant and vehemently opposed the bail application. He submitted that there is direct allegation against the petitioner, who is the source of the information and he has put the video of the informant on the social media which has tarnished the image of the informant and her daughter and as such, the petitioner cannot be absolved from the allegation made under Section 67 of the IT Act.

6. Learned APP for the State also vehemently



opposed the prayer for grant of pre-arrest bail. He submitted that the material has been collected in course of investigation against the petitioner and, as such, petitioner don't deserve to be released on pre-arrest bail.

7. Before considering the rival submissions, I find it apt to analyze whether the use of expletives and profane language putting the news on News Bihar IV on Whatsapp (Social Media) will amount to commission of offence under Section 67 of Information and Technology Act, 2000, which is reproduced hereinafter:

“67. Punishment for publishing or transmitting obscene material in electronic form.—Whoever publishes or transmits or causes to be published or transmitted in the electronic form, any material which is lascivious or appeals to the prurient interest or if its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it, shall be punished on first conviction with imprisonment of either description for a term which may extend to three years and with fine which may extend to five lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to five years and also with fine which may extend to ten lakh rupees.”

8. Section 292 of the Indian Penal Code in this regard is also reproduced hereinafter:

“292. Sale, etc., of obscene books, etc.—(1) For the purposes of sub-section (2), a book, pamphlet, paper, writing, drawing, painting, representation, figure or any other object, shall be deemed to be obscene if it is lascivious or appeals to the prurient interest or if its effect, or (where it comprises two or more distinct items) the effect of any one of its items, is, if taken as a whole, such as to



tend to deprave and corrupt persons, who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it.”

9. While considering the offence under Section 67 of the IT Act, the Apex Court in the case of ***Apoorva Arora & Anr. Etc. vs. State (Govt. of NCT of Delhi) & Anr.*** reported in **2024 INSC 223** has observed as follows:

"14. This test lays emphasis on the potentiality of the material to deprave and corrupt by immoral influences.²⁴ To determine this, the Court must apply itself to consider each work at a time. It must take an overall view of the obscene matter in the setting of the whole work but also consider the obscene matter by itself and separately to find out whether it is so grossly obscene and it is likely to deprave and corrupt. A mere stray word or insignificant passage would not suffice to qualify the material as obscene.²⁵ The Court also clarified that sex and nudity in art and literature cannot in and of themselves be regarded as evidence of obscenity without something more.²⁶ Sex must be treated in manner that is offensive to public decency and morality, when judged by our national standards, and must be likely to pander to lascivious, prurient, sexually precocious minds, and appeal to or have the tendency to appeal to the “carnal side of human nature” for it to be obscene.

15. The Court also emphasised its role in maintaining a delicate balance between protecting freedom of speech and artistic freedom on the one hand, and public decency and morality on the other. It held that when art and obscenity are mixed, the art must be so preponderating that the obscenity is pushed into the shadows or is trivial and insignificant and can be overlooked.²⁸ Similarly, if the matter has a preponderating social purpose and gain that overweighs the obscenity of the content (such as medical textbooks), then such material is constitutionally protected by freedom of speech and cannot be criminalised as obscene.

17. In KA Abbas v. Union of India the Court summarised the test and process to determine obscenity as follows:

“(1) Treating with sex and nudity in art and literature cannot be regarded as evidence of obscenity



without something more.

(2) Comparison of one book with another to find the extent of permissible action is not necessary.

(3) The delicate task of deciding what is artistic and what is obscene has to be performed by courts and in the last resort, by the Supreme Court and so, oral evidence of men of literature or others on the question of obscenity is not relevant.

(4) An overall view of the obscene matter in the setting of the whole work would of course be necessary but the obscene matter must be considered by itself and separately to find out whether it is so gross and its obscenity is so decided that it is likely to deprave or corrupt those whose minds are open to influence of this sort and into whose hands the book is likely to fall.

(5) The interests of contemporary society and particularly the influence of the book, etc., on it must not be overlooked.

(6) Where obscenity and art are mixed, art must be so preponderating as to throw obscenity into shadow or render the obscenity so trivial and insignificant that it can have no effect and can be overlooked.

(7) Treating with sex in a manner offensive to public decency or morality which are the words of our Fundamental Law judged by our national standards and considered likely to pander to lescivious, pourlent or sexually precocious minds must determine the result.

(8) When there is propagation of ideas, opinions and informations or public interests or profits, the interests of society may tilt the scales in favour of free speech and expression. Thus books on medical science with intimate illustrations and photographs though in a sense immodest, are not to be considered obscene, but the same illustrations and photographs collected in a book form without the medical text would certainly be considered to be obscene.

(9) Obscenity without a preponderating social purpose or profit cannot have the constitutional protection of free speech or expression. Obscenity is treating with sex in a manner appealing to the carnal side of human nature or having that tendency. Such a treating with sex is offensive to modesty and decency.

(10) Knowledge is not a part of the guilty act. The offender's knowledge of the obscenity of the book is not required under the law and it is a case of strict liability."



10. From the reading of Section 67 of the IT Act and the materials which have been collected against the petitioner, I find that no offence is made out under Section 67 of the IT Act. The informant may find vulgar and expletive-filled language to be distasteful, unpalatable, uncivil, and improper, that by itself is not sufficient to be 'obscene'. Obscenity relates to material that arouses sexual and lustful thoughts, which is not at all the effect of the abusive language or profanities that have been employed in the news channel.

11. I am of the opinion that petitioner has, *prima facie*, made out a case to be released on pre-arrest bail in absence of any objectionable explicit content put on the social media.

12. The petitioner, above named, is directed to be released on pre-arrest bail, in the event of his arrest or surrender before the learned District Court 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 Chief Judicial Magistrate, Chapra, District, Saran / Concerned Court in connection with Marhowrah P.S. Case No. 730 of 2024, subject to the conditions as laid down under Section 482(2) of the BNSS.



13. The learned District Court is directed to verify the criminal antecedent of the petitioner and if it is found that the petitioner is involved in some other cases, as what has been stated in paragraph no.3 of the bail application, this order will automatically lose its force.

(Purnendu Singh, J)

Sanjay/-
A.F.R.

U		T	
---	--	---	--

