

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.723 of 2026

Arising Out of PS. Case No.-105 Year-2025 Thana- MAHILA P.S. District- Patna

Sehwag Kumar @ Sahwag Kumar S/O Anil Kumar Paswan Resident of Ward
No. 05, Miyan Toli, Khushrupur, P.S.- Khushrupur, District- Patna

... .. Petitioner/s

Versus

1. The State of Bihar
2. Shyama Kumari D/o Ashok Paswan Resident of village Bhuski Ward no. 10
P.O.+P.S. Khusrupur, District Patna

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr.Saket Tiwary, Advocate
For the Informant	:	Ms.Kumari Kalpana Mishra, Advocate
For the Opposite Party/s	:	Mr.Sanjay Kumar Tiwary, APP

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

3 06-04-2026 Heard learned counsel appearing on behalf of the

petitioner, learned counsel for the informant and the learned

APP for the State.

2. Petitioner seeks pre-arrest bail in connection with

Mahila P.S.Case No.105 of 2025, registered for the offences

punishable under Sections 126(2), 115(2), 351(2) and 69/3(5)

of BNS.

3.As per the allegations made in the FIR, the

petitioner allegedly established physical relationship with the

victim (informant) while she was aged about 15 years and the

relationship continued allegedly for total period of six years,

thereafter, the petitioner deserted her and got married with



another woman, after he became major, which calls for prosecution against the petitioner.

4. Mr. Saket Tiwari, learned counsel appearing on behalf of the petitioner has admitted that there was relationship between the petitioner & the informant and the petitioner established physical relationship with her but that had been done as per the own choice of the informant (victim). As such, the petitioner can not be said to have committed crime, which falls under Section 376(2) of the IPC.

5. Learned counsel has relied on Paragraph 25 of the judgment passed in the case of *Uday v. State of Karnataka*, reported in **(2003) 4 SCC 46**, to content that for the application of Section 90 of BNS, two conditions must be fulfilled- Firstly that the consent was given under a misconception of fact and Secondly that the accused knew or had reason to believe that such consent was given in consequence of such misconception, most respectfully submitted that in the present case both these essential ingredients are conspicuously absent, inasmuch as, the material on record does not establish that the prosecutrix had consented to the alleged relationship solely on account of any promise of marriage, rather the circumstances indicate that the parties were in a relationship of mutual affection and deep love,



where consent was a product of voluntary inclination and emotional involvement, as also observed by the Hon'ble Supreme Court that in such situations, the promise to marry loses significance when parties, overcome by passion and emotions, engage in a physical relationship, and further there is no evidence whatsoever to show that the petitioner knew or had reason to believe that the consent of the prosecutrix was based on any misconception of fact arising out of such promise, especially when multiple factors could have influenced her decision, thereby making it impossible to impute the requisite knowledge to the petitioner, and consequently the prosecution has failed to satisfy the twin conditions mandated under Section 90 of the IPC, rendering the present prosecution unsustainable in the eyes of law.

6. Learned counsel further submitted that the victim (informant) had given the petitioner a sum of Rs.4 lac and she had transacted the said amount into the bank account of the petitioner as per her own choice. Considering the said allegation, the learned counsel has submitted that the informant has remedy before the learned district court to realize the said amount by filing the Money Suit, if it is due with the petitioner. On these grounds, the learned counsel seeks that the petitioner



has made out a case to be released on pre-arrest bail.

7. *Per contra*, Ms. Kumari Kalpana Mishra, learned counsel, who has tendered her appearance on behalf of the informant has submitted that the petitioner has admitted that he was in relationship with the informant since the time when both of them were minor and after attaining the age of majority and enjoying relationship for more than six years, the petitioner subjected her to cruelty by deserting her whereas he had promised her to marry, such relationship has now been accepted and has legal force. Learned counsel further submitted that the informant being innocent and on the pretext of marriage when she was of tender age and had not attained the age of marriage was trapped in the lust of the petitioner. The intention of the petitioner from the very beginning was to seduce her with a lust to establish physical relationship with the victim and he continued to have relationship with her for six years even after they attained majority and even forced the informant to transfer Rs.4 lac in the bank account on the pretext of marriage. As such, the petitioner does not deserve to be released on pre-arrest bail.

8. Learned APP for the State has vehemently opposed the prayer for grant of pre-arrest bail and he has submitted that



in course of the investigation, sufficient materials has come against the petitioner.

9. Heard the parties.

10. Having considered the rival submissions made on behalf of the parties, as well as, having perused the allegations made in the FIR and also perused the evidences, which have come in course of the investigation, it is admitted that the petitioner was in relationship with the informant when they were minor and they were unaware of the result of such relationship. The petitioner and the informant come from very downtrodden class to the society and their parents were not aware of such relationship. Though, it is admitted that while the petitioner and the informant used to go to take tuition, the petitioner influenced her though the informant was minor and the petitioner had also not attained the age of majority. It has not been denied by the parties that they were in continuous physical relationship for more than six years and when the petitioner attained the age of majority (21 years), he has got married allegedly with another woman, however, no evidence has come in course of the investigation in support of the said claim made on behalf of the informant also in respect of certain money transaction, which she claimed amounting to Rs.4 lac to the



petitioner. However, in absence of denial of the relationship, the case under Section 376(2) of the IPC is made out against the petitioner. Petitioner's counsel has relied on the law laid down in the case of **Uday** (Supra). In the background of the above facts and allegation made in the present case, I find that in very similar circumstances, the Apex Court in the case of **Pramod Kumar Navratna Vs. The State of Chhattisgarh & Ors.** reported in **2026 LiveLaw (SC) 118**, in which the Apex Court concluded in **Paragraph Nos .14, 15 and 16** as follows : -

“14. We have given our thorough consideration to the arguments advanced at the Bar and the material on record.

15. In the instant case the allegations in the FIR are under Section 376(2)(n) of the IPC. An offence of rape, if established in terms of Section 375 of the IPC, is punishable under Section 376 of the IPC. In the present case, the second description of Section 376 is relevant which is set out below:

“376. Punishment for rape. — (1). *Whoever, except in the cases provided for in sub-section (2), commits rape, shall be punished with rigorous imprisonment of either description for a term which [shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine].*

2. Whoever, -

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(h) *commits rape repeatedly on the same woman, shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.*



Explanation.—For the purposes of this sub-section,—

(a) “armed forces” means the naval, military and air forces and includes any member of the Armed Forces constituted under any law for the time being in force, including the paramilitary forces and any auxiliary forces that are under the control of the Central Government or the State Government;

(b) “hospital” means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation;

(c) “police officer” shall have the same meaning as assigned to the expression “police” under the Police Act, 1861 (5 of 1861);

(d) “women's or children's institution” means an institution, whether called an orphanage or a home for neglected women or children or a widow's home or an institution called by any other name, which is established and maintained for the reception and care of women or children.”

16. Section 376(2)(n) of the IPC provides for enhanced punishment in cases where rape is committed repeatedly on the same woman. It mandates rigorous imprisonment for a term of not less than ten years which may extend to life imprisonment for the remainder of the person's natural life. The object of this provision is to address aggravated instances of sexual assault where the offence is not a single incident but has occurred repeatedly on the same victim. The expression “repeatedly” employed in the provision is of significance. It contemplates more than one act of sexual assault, committed at different points in time on the same victim. Courts have consistently interpreted this phrase to mean a series of acts that are separate in nature and not a continuation of a single transaction. In genuine cases under Section 376(2)(n) of the IPC, the pattern is usually unmistakable; it is an initial act of sexual assault, followed by multiple acts under fear, pressure, captivity, or continued deceit, often when the woman is rendered vulnerable and unable to escape the



situation.”

11. The Apex Court in the case of ***Pramod Kumar Navratna (supra)*** relying on its earlier judgment passed in the case of ***Naim Ahamed Vs. State (NCT of Delhi)*** reported in ***2023 (15) SCC 385*** has finally concluded in **Paragraph no.21** as under:

21. The bone of contention raised on behalf of the respondents is that the prosecutrix had given her consent for sexual relationship under the misconception of fact, as the accused had given a false promise to marry her and subsequently he did not marry, and therefore such consent was no consent in the eye of the law and the case fell under Clause Secondly of Section 375IPC. In this regard, it is pertinent to note that there is a difference between giving a false promise and committing breach of promise by the accused. In case of false promise, the accused right from the beginning would not have any intention to marry the prosecutrix and would have cheated or deceived the prosecutrix by giving a false promise to marry her only with a view to satisfy his lust, whereas in case of breach of promise, one cannot deny a possibility that the accused might have given a promise with all seriousness to marry her, and subsequently might have encountered certain circumstances unforeseen by him or the circumstances beyond his control, which prevented him to fulfil his promise. So, it would be a folly to treat each breach of promise to marry as a false promise and to prosecute a person for the offence under Section 376. As stated earlier, each case would depend upon its proved facts before the court.

12. In the present case also, the facts are almost identical in the facts and circumstances of the case and evidences which have come in course of investigation, the petitioner has not denied the relationship and the money



transaction of Rs.4 lac, which was given to him by the informant. Subsequently, the petitioner has got married after attaining the age of marriage of 21 years recently with another woman, which goes to prove that the petitioner has subjected the informant to cruelty.

13. The entire gamut of the case goes to prove that the two had relationship of their choice but the petitioner after attaining the age of majority got married with another women and he has subjected the informant to cruelty. I find that the petitioner has just attained the age of 21 years of age and the informant is of the same age and now they understand each other, a chance can be provided to them to settle their dispute amicably.

14. This Court finds that three individuals have been put to face a situation in which all are psychologically and emotionally attached to each other but the triangular relationship is the stigma on the society.

15. However, considering the age of the petitioner, who is now 21 years old and has just enjoyed as an adult, relying upon the judgment of the Madras High Court passed in the case of *Vijay Lakshmi & Anr. Vs. State rep. Inspector of Police & Anr.* reported in *2021 SCC OnLine Mad. 317*, the



learned district court is directed to pass fresh order after exploring the opportunity of mediation between the parties first by resorting to mediation giving opportunity to the parents of three individuals, who can now understand the consequences of their own action best to decide their interest and future.

16. Learned Mediator of the District Mediation Center concerned, upon appearance of the parties, shall make his/her best efforts to settle the dispute amicably between the parties.

17. In case the parties fail to reconcile, then in that case, parties may avail appropriate remedy in accordance with law.

18. With aforesaid direction and observation, the present application stands disposed of.

(Purnendu Singh, J)

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