

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No.1049 of 2025

Kamleshwar Kumar Bharti, aged about 56 years, Son of Sri Hari Ram, resident of Lahsigna Road, Ambedkar Puri, P.O.-Hazaribagh, P.S.-Hazaribagh (Sadar), District-Hazaribagh (Jharkhand), at present resident of District Animal Husbandry Office, Pakur, P.O.-Pakur, P.S.-Pakur (T), Dist.-Pakur.

... Petitioner

Versus

The State of Jharkhand

... Opposite Party

For the Petitioner : Mr. Umesh Kr. Choubey, Advocate
: Mr. Jalaj Pati Tiwari, Advocate
For the State : Mr. Shiv Shankar Kumar, Addl.P.P.

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

By the Court:- Heard the parties.

2. This Criminal Miscellaneous Petition has been filed invoking the jurisdiction of this Court under Section 528 of the B.N.S.S., 2023 with the prayer to quash and set aside the order dated 11.03.2025 passed by learned Chief Judicial Magistrate, Pakur whereby and where under the learned Chief Judicial Magistrate, Pakur has taken cognizance for the offences punishable under Sections 64(2)(b), 74, 115(2), 351(2), 75(2), 79 of the B.N.S., 2023 against the petitioner in connection with Pakur (T) P.S. Case No.296 of 2024 corresponding to G.R. Case No.161 of 2025 on the basis of the charge sheet submitted by the police after investigation of the case.

3. The allegation against the petitioner is that the petitioner being a public servant committed rape upon the informant who was engaged as a contractual Junior Division Clerk in the office of District Animal Husbandry, Pakur on outsourcing basis while the petitioner was posted as District Animal Husbandry Officer in the district of Pakur. There is also allegation against the petitioner of using criminal force to the informant with intent to outrage her modesty, causing sexual harassment to her, besides uttering words and making gestures with intent to insult the modesty of the informant, who is a woman, causing simple hurt to the informant, committing criminal intimidation to the informant. On the basis of the written report of the informant, police registered Pakur (T) P.S. Case No.296 of 2024 and took up investigation of the case, after completion of the investigation, police submitted charge sheet against the petitioner after finding the allegations against the petitioner to be true for having committed the said offences as already indicated above and on the basis of the same, the learned Chief Judicial Magistrate, Pakur has taken cognizance of the offences in respect of which charge sheet was submitted against the petitioner by the police.

4. Learned counsel for the petitioner submits that the case is next fixed on 27.01.2026 for the purpose of consideration of framing of charge.

5. Learned counsel for the petitioner relies upon the order of the Hon'ble Supreme Court of India in the case of **Kunal Chatterjee vs. The State of West Bengal & Others dated 29.07.2025** in **Special Leave Petition (Crl.) No.7004 of 2025** wherein the facts of that case, the victim

girl when she was of 15 years of age had a consensual relationship with the appellant after the appellant had promised to marry her but after the victim became major, the appellant backed out from the promise of marriage, the Hon'ble Supreme Court of India relying upon several of its judgments wherein it was held that promise to marriage and subsequent physical relationship between two with consent would not amount to rape and particularly considering a long delay of 3 years in lodging the FIR held that the continuation of the criminal proceeding against the appellant before the Hon'ble Supreme Court of India, in that case would amount to abuse of process of law and quashed the entire criminal proceeding.

6. It is next submitted that in this case also, the first occurrence of rape has been taken place in the year 2021, while the FIR was lodged on 26.11.2024 and this is a fit case where the entire criminal proceeding be quashed because of the delay in lodging the FIR.

7. Learned counsel for the petitioner next relies upon the judgment of the Hon'ble Supreme Court of India in the case of **Surendra Khawse vs. State of Madhya Pradesh & Another** reported in **2025 SCC OnLine SC 2043** and submits that in that case, the Hon'ble Supreme Court of India in the facts of the case wherein, the complainant and the accused were colleagues for past five years and somewhere during this time their relationship progressed and that the accused person had initiated legal processes/administrative processes against the complainant much prior to the FIR was lodged and that the same was lodged four months after the

alleged incident of forced sexual intercourse with the informant and the facts of that case, the Hon'ble Supreme Court of India quashed the charge sheet against the appellant before the Hon'ble Supreme Court of India and submits that in this case also, the petitioner having falsely been implicated, as the petitioner has removed the informant from service on 18.11.2024, hence, this false case has been foisted. It is next submitted that the petitioner further denied writing any apology letter as claimed by the informant and though the last occurrence took place on 20.10.2024, but FIR has been lodged on 26.11.2024. It is next submitted that by a cryptic order, cognizance has been taken. It is lastly submitted that the prayer as prayed for, in this Cr.M.P., be allowed.

8. Learned Addl.P.P. appearing for the State on the other hand vehemently opposes the prayer of the petitioner made in the instant Cr.M.P and submits that the facts of this case are entirely different from the facts of the case of **Kunal Chatterjee vs. The State of West Bengal & Others** and **Surendra Khawse vs. State of Madhya Pradesh & Another**. It is next submitted that this is not a case of, one off occurrence of rape, but there is allegation against the petitioner of first committing rape upon the informant is a condition to engage her as a Junior Division Clerk and subsequently there are further allegations of using criminal force upon the informant with intent to outrage her modesty, committing sexual harassment of the informant by establishing physical contact and advances involving unwelcomed and explicit sexual overtures and demanding and requesting for sexual favours by making calls in the

uneearthly hours to the informant by making calls over social media platforms and chats. There is further allegation against the petitioner of intending to insult the modesty of the informant uttering the words and gestures intending that the same shall be heard and seen by the informant woman. It is next submitted that there is further allegation that the petitioner has captured the intimate scene of him with the informant by preparing video and threatened the informant that unless she gives into his unlawful advances and favours, he will make the said video viral on social media. It is next submitted that the police found the allegations against the petitioner to be true and the informant in her statement under Section 183 of the B.N.S.S., 2023 has also supported the case of the prosecution. It is next submitted that the police found each of the allegations to be true during the investigation of the case and the claim of the petitioner that the allegations against him are all false is a defence which the petitioner can take during the trial of the case, but when the evidence of the prosecution is yet to begin at this stage, it is not open for this Court to consider the defence of the petitioner in exercise of its power under Section 528 of the B.N.S.S., 2023. It is lastly submitted that this Cr.M.P., being without any merit, be dismissed.

9. Having heard the rival submissions made at the Bar and after carefully going through the materials available in the record, this Court finds that there are direct and specific allegations against the petitioner of once committing rape upon the informant for giving her employment as a Junior Division Clerk in the District Animal Husbandry Office, Pakur. The

undisputed facts remains that the petitioner was a public servant posted as District Animal Husbandry Officer of Pakur and the informant was working in that office as a Junior Division Clerk being engaged through outsourcing agency. There is direct and specific allegation against the petitioner of sending WhatsApp messages in the late night and indulging in obscene chat with the informant between 11 PM to 12 midnight and making calls also. There is direct allegation against the petitioner of giving in writing his apology for the offence committed by him and promising not to repeat such offence and all these allegations were found to be true by the police during the investigation of the case.

10. Under such overwhelming materials available in the record, this Court has no hesitation in holding that the facts of this case are entirely different from the facts of the case of **Kunal Chatterjee vs. The State of West Bengal & Others (supra)** and **Surendra Khawse vs. State of Madhya Pradesh & Another (supra)**.

11. It is a settled principle of law that the defence of the petitioner and the veracity of the evidence put forth by the accused, cannot be considered in exercise of jurisdiction under Section 482 Cr.P.C. which corresponds to Section 528 of the B.N.S.S., 2023 by the High Court, as that would be job of the trial court, as has been held by the Hon'ble Supreme Court of India, in the case of **State of Madhya Pradesh vs. Awadh Kishore Gupta & Ors.** reported in **2004 (2) Supreme 501**.

12. It is also a settled principle of law that the power under Section 482 of Cr.P.C. which corresponds to Section 528 of the B.N.S.S., 2023 cannot be

exercised by the High Court to conduct a mini trial as has been reiterated by the Hon'ble Supreme Court of India in the case of **State of Uttar Pradesh & Anr. vs. Akhil Sharda & Ors.** reported in **2022 LiveLaw SC 594**, the relevant portion of which reads as under:-

"Having gone through the impugned judgment and order passed by the High court has set aside the criminal proceedings in exercise of powers under Section 482 CrPC, it appears that the High Court has virtually conducted a mini trial, which as such is not permissible at this stage and while deciding the application under Section 482CrPC. As observed and held by this court in a catena of decisions, no mini trial can be conducted by the High Court in exercise of power under Section 482CrPC, jurisdiction and at the stage of deciding the application under Section 482CrPC, the High Court cannot get into appreciation of evidence of the particular case being considering. (Emphasis supplied)

13. Considering the aforesaid facts, this Court is of the considered view that this is not a fit case where the prayer as prayed for by the petitioner in this Cr.M.P. is to be acceded in exercise of the power under Section 528 of the B.N.S.S., 2023.

14. Accordingly, this Cr.M.P., being without any merit is dismissed.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 19th of January, 2026
AFR/ Abhiraj

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