IN THE HIGH COURT OF JHARKHAND AT RANCHI
Criminal Appeal (S.J.) No. 157 of 2017

Anup Ekka S/o Late Anthoney Ekka, Resident of Village-Dorma, Footkal Toli, P.O.-Dorma, P.S.-Torpa, Dist.-Khunti
..... Appellant

Versus

The State of Jharkhand **..... Respondent**

For the Appellant : Mr. Shresth Gautam, Advocate
For the State : Mr. Sanjay Kr. Srivastava, A.P.P.

PRESENT
HON'BLE MR. JUSTICE ARUN KUMAR RAI

J U D G M E N T

C.A.V. on 14.01.2026 **Pronounced on: 21.09.2026**

1. Heard Mr. Shresth Gautam, learned counsel appearing for the appellant/accused and Mr. Sanjay Kr. Srivastava, learned A.P.P appearing on behalf of the State.

2. The instant Criminal Appeal is directed against the judgment of conviction and order of sentence dated 19.12.2016 passed by District & Additional Sessions Judge-I, Khunti in Sessions Trial Case No. 12 of 2016, whereby and whereunder the appellant has been convicted for the offence punishable under Section 376 of IPC and sentenced him to undergo R.I. for 7 years with a fine of Rs 25,000/-. Further, in default of payment of fine, the convict is also directed to further undergo R.I. for one more year.

3. In the present case, FIR has been based upon the written report dated 20.06.2015 of the victim, wherein she stated that she has passed Matriculation examination in the

year 2010. There is a Rajkiya High School, Pelol situated at 100 yards from her place where the appellant (resident of village-Dorma, Futkal Toli, P.S.-Torpa, District-Khunti) had been working as a teacher since 2014 and he often used to visit to her house to meet her father but he had an evil eye on her and would occasionally interact with her. In January, 2015, he expressed his desire to marry the victim. On 25.01.2015, the victim was taken to the house of the appellant/accused on the assurance given to her father that, after meeting his mother and showing her his house, she would be brought back. However, after having dinner at the house of the appellant/accused, the victim was taken in a room where the appellant forcibly committed rape upon her. When she started weeping, the appellant/accused told the victim that he would marry her.

4. It has further been alleged that, again, on 10.02.2015, the appellant took the victim to his house and, during the night established physical relations with her. She was not allowed to return to her house on 11.02.2015 as she was kept in appellant's house, where during that night also, physical relation was established with her against her will. The victim told the appellant/accused that her parents had already come to know about their relationship and, therefore, requested him to speak to her parents regarding their marriage. Thereafter, in the month of May 2015, the appellant/accused visited victim's house and told her father that he would marry the victim. However, on 18.06.2015, he flatly refused to marry her. It is also alleged that the appellant was influenced by his mother not to marry the victim.

5. Upon the aforesaid allegation, an FIR being Murhu P.S. Case No.49/2015 dated 20.06.2015 registered under Sections 376/417 of IPC against the appellant and after due investigation, charge-sheet was submitted on 18.09.2015 against the appellant/accused under Sections 376/419 of IPC and against Jesinta Ekka (mother of the appellant/accused) under Section 109 of IPC. Learned Magistrate took cognizance of the offences and committed the case to the Court of Sessions, where it was registered as S.T. No. 12/2016. Charges were framed, against the appellant/accused for the offence punishable under Sections 376 and 419 of IPC and against Jesinta Ekka (mother of the appellant/accused) under Section 109 of IPC. The above-stated charges were read over to them and explained to the accused persons in Hindi, to which they pleaded not guilty and claimed to be tried.

6. To prove its case, the prosecution has examined 11 witnesses in the present case; however, no witnesses were examined on behalf of the defence. The statements of the accused persons under Section 313 Cr.P.C. were recorded on 23.11.2016 whereby there is simple denial on the part of the accused persons.

7. The trial court after considering the evidences available on the record, acquitted Jesinta Ekka (mother of the appellant/accused) from the charge under Section 109 of IPC, however convicted the appellant/accused for the offence punishable under Section 376 of IPC and sentenced him to undergo R.I. for 7 years with a fine of Rs 25,000/-. Further, in default of payment of fine, the convict was directed to undergo R.I. for one more year. Being aggrieved, the appellant/accused preferred the instant appeal.

8. Learned counsel for the appellant/accused has pointed out that there are material contradictions in the version of the victim (PW-1) which render the prosecution case doubtful. It is submitted that, as per her own version, she was enticed by the appellant/accused to accompany him to his house and she subsequently resiled from her earlier statement that she had voluntarily accompanied the appellant/accused to his house on two occasions and that on both occasions, physical relations were established between them, and she voluntarily stayed with the appellant/accused for overnight. It is further submitted that even if the victim had gone to the house of the appellant/accused against her will, she could have raised an alarm when the appellant/accused allegedly forced himself upon her, particularly as the mother and sister of the appellant/accused were also present in the house. As such, it is submitted that there are material contradictions in the testimony of the victim, which have not been duly considered by the learned trial court.

9. Learned counsel for the appellant/accused has further submitted that, admittedly the victim was major at the time of alleged occurrence and had accompanied the appellant/accused of her own free will and volition. Therefore, the physical relations established between the victim and the appellant were consensual. It is further submitted that the allegation of sexual intercourse on the basis of a false promise of marriage cannot be sustained in the eyes of law; as a mere breach of promise to marry does not by itself, amount to a misconception of fact within the meaning of Section 90 of IPC. As such, no offence under section 376 of IPC is made out. Rather at best from

prosecution perspective the case may amount to a breach of promise by the appellant to marry the victim.

10. To buttress the aforesaid argument, learned counsel for the appellant/accused has placed reliance upon the judgment rendered by the Hon'ble Supreme Court in the case of ***Pramod Suryabhan Pawar v. State of Maharashtra*** reported in ***(2019) 9 SCC 608*** and ***Deelip Singh v. State of Bihar*** reported in ***(2005) 1 SCC 88*** wherein it has been held that, "a breach of promise to marry cannot, be a false promise and to establish false promise, maker of promise should have had no intention of upholding his words at the time of giving it". Upon the aforesaid premise, prayer has been made that this is a fit case for acquittal of the appellant/accused.

11. *Per contra*, learned A.P.P for the State has submitted that the learned trial court has rightly convicted the appellant/accused under Section 376 of IPC on the ground that the physical relationship was established on the basis of false promise to marry. It is submitted that the victim had not consented to the appellant/accused having forcefully establishing physical relation with her for the first time and that, in the course of occurrence the appellant/accused made a promise to marry her so that she would not disclose the incident to anyone. It is pointed out that there existed cordial relation between the appellant/accused and victim's father and that the victim had gone to the house of appellant/accused on his assurance to her father that she would be brought back after meeting with his mother. Thus, the appellant/accused took the victim to his house and committed rape upon her. It is,

therefore, submitted that there was no consent on the part of the victim to the physical relationship.

12. It is further submitted that the appellant/accused forcibly committed rape upon her and when she started weeping gave her a false assurance/promise of marriage. It is further submitted that when the victim attempted to raise an alarm, appellant/accused gagged her mouth so as to prevent her from screaming seeking help. Thus, according to learned counsel for the State, promise of marriage was made by the appellant/accused while committing rape without any intention to fulfill from the very inception to fulfill the said promise. It is, therefore, submitted that the promise was false and vitiated the consent of the victim, and that no interference is required with the judgment passed by the learned trial court is warranted.

13. Heard the counsel for the parties and perused the materials available on record.

14. Before coming to the facts of the present case, it is apposite to discuss the judgment rendered by the Hon'ble Supreme Court in the case of ***Deepak Gulati v. State of Haryana***, reported in ***(2013) 7 SCC 675*** wherein the Apex Court has made distinction between rape and consensual intercourse and differentiated between a mere breach of promise and not fulfilling a false promise and held that an accused will only be liable if the Court concludes that his intentions are *mala fide* and he has clandestine motives. The relevant paragraphs are reproduced herein below :-

> *"21. Consent may be express or implied, coerced or misguided, obtained willingly or through deceit. Consent is an act of reason, accompanied by deliberation, the mind weighing, as in a balance, the good and evil on each side. There is a clear distinction between rape and consensual sex and in a case like this, the court must very carefully examine whether the accused had actually wanted to marry the victim, or had mala fide motives, and had made a false promise to this effect only to satisfy his lust, as the latter falls*

> *within the ambit of cheating or deception. There is a distinction between the mere breach of a promise, and not fulfilling a false promise. Thus, the court must examine whether there was made, at an early stage a false promise of marriage by the accused; and whether the consent involved was given after wholly understanding the nature and consequences of sexual indulgence. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused, and not solely on account of misrepresentation made to her by the accused, or where an accused on account of circumstances which he could not have foreseen, or which were beyond his control, was unable to marry her, despite having every intention to do so. Such cases must be treated differently. An accused can be convicted for rape only if the court reaches a conclusion that the intention of the accused was mala fide, and that he had clandestine motives.*
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> *24. Hence, it is evident that there must be adequate evidence to show that at the relevant time i.e. at the initial stage itself, the accused had no intention whatsoever, of keeping his promise to marry the victim. There may, of course, be circumstances, when a person having the best of intentions is unable to marry the victim owing to various unavoidable circumstances. The "failure to keep a promise made with respect to a future uncertain date, due to reasons that are not very clear from the evidence available, does not always amount to misconception of fact. In order to come within the meaning of the term "misconception of fact", the fact must have an immediate relevance". Section 90 IPC cannot be called into aid in such a situation, to pardon the act of a girl in entirety, and fasten criminal liability on the other, unless the court is assured of the fact that from the very beginning, the accused had never really intended to marry her."*

15. The Hon'ble Supreme Court in the case of ***Mahesh Damu Khare v. State of Maharashtra*** reported in ***(2024) 11 SCC 398*** whereby the Apex court has discerned the prerequisites as underlined in the case of ***Pramod Suryabhan Pawar v. State of Maharashtra*** reported in ***(2019) 9 SCC 608*** wherein it has been has held that to make a man, accused of having sexual relationship by making a false promise of marriage, criminally liable, the physical relationship must be traceable directly to the false promise made and it must not be qualified by other circumstances or consideration. In a situation where the woman knowingly maintains the physical relationship for a prolonged period, it cannot be said with certainty that the said physical relationship was purely because of alleged promise made by the accused to marry her. In conclusion, the Court held that

unless it can be shown that the physical relationship was purely because of the promise of marriage and without being influenced by any other consideration, it cannot be said that there was vitiation of consent under misconception of fact. The relevant paragraphs are reproduced herein below :–

> *25. Keeping this aspect in mind as to what amounts to consent with reference to Section 375IPC, this Court has examined and considered in a number of cases that if the person acts with an active understanding of the circumstances, actions and consequences of the act, it would indicate the presence of consent. It was observed in Shambhu Kharwar v. State of U.P. [Shambhu Kharwar v. State of U.P., (2024) 16 SCC 502 : 2022 SCC OnLine SC 1032] as follows: (SCC para 9)*
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> *"9. In Pramod Suryabhan Pawar v. State of Maharashtra [Pramod Suryabhan Pawar v. State of Maharashtra, (2019) 9 SCC 608 : (2019) 3 SCC (Cri) 903] , a two-Judge Bench of this Court of which one of us was a part (D.Y. Chandrachud J.), held in Sonu v. State of U.P. [Sonu v. State of U.P., (2021) 18 SCC 517] , observed that: (Pramod Suryabhan Pawar case [Pramod Suryabhan Pawar v. State of Maharashtra, (2019) 9 SCC 608 : (2019) 3 SCC (Cri) 903] , SCC pp. 616-18 & 620, paras 12, 14, 16 & 18)*
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> *'12. This Court has repeatedly held that consent with respect to Section 375IPC involves an active understanding of the circumstances, actions and consequences of the proposed act. An individual who makes a reasoned choice to act after evaluating various alternative actions (or inaction) as well as the various possible consequences flowing from such action or inaction, consents to such action. …*
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> *14. … Specifically in the context of a promise to marry, this Court has observed that there is a distinction between a false promise given on the understanding by the maker that it will be broken, and the breach of a promise which is made in good faith but subsequently not fulfilled. …*
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> *16. Where the promise to marry is false and the intention of the maker at the time of making the promise itself was not to abide by it but to deceive the woman to convince her to engage in sexual relations, there is a "misconception of fact" that vitiates the woman's "consent". On the other hand, a breach of a promise cannot be said to be a false promise. To establish a false promise, the maker of the promise should have had no intention of upholding his word at the time of giving it. The "consent" of a woman under Section 375 is vitiated on the ground of a "misconception of fact" where such misconception was the basis for her choosing to engage in the said act. …*
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> *18. To summarise the legal position that emerges from the above cases, the "consent" of a woman with respect to Section 375 must involve an active and reasoned deliberation towards the proposed act. To establish whether the "consent" was vitiated by a "misconception of fact" arising out of a promise to marry, two propositions must be established. The promise*

of marriage must have been a false promise, given in bad faith and with no intention of being adhered to at the time it was given. The false promise itself must be of immediate relevance, or bear a direct nexus to the woman's decision to engage in the sexual act."

(emphasis supplied)

26. The complainant had taken the plea that the appellant had physical relationship with her against her consent by making a false promise that he would marry her. In this regard, it has to be considered whether making a false promise to marry amounts to an offence. If a false promise of marriage is made to a woman by a man, thus deceiving the woman leading her to engage in sexual relations, it may amount to misconception of fact, in which case the consent given by the woman may be vitiated. In this regard one may refer to the decision of this Court in Naim Ahamed v. State (NCT of Delhi) [Naim Ahamed v. State (NCT of Delhi), (2023) 15 SCC 385] : (SCC p. 398, para 21)

"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 law and the case fell under the 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 deceited 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."

27. In our view, if a man is accused of having sexual relationship by making a false promise of marriage and if he is to be held criminally liable, any such physical relationship must be traceable directly to the false promise made and not qualified by other circumstances or consideration. A woman may have reasons to have physical relationship other than the promise of marriage made by the man, such as personal liking for the male partner without insisting upon formal marital ties.

28. Thus, in a situation where physical relationship is maintained for a prolonged period knowingly by the woman, it cannot be said with certainty that the said physical relationship was purely because of the alleged promise made by the appellant to marry her. Thus, unless it can be shown that the physical relationship was purely because of the promise of marriage, thereby having a direct nexus with the physical relationship without being influenced by any other consideration, it cannot be said that there was vitiation of consent under misconception of fact.

16. As far as, in the judgment rendered by the Hon'ble Supreme Court in the case of ***Deelip Singh (Supra)***, as

relied by the learned counsel for the appellant/accused, it was held that consent or absence of promise could be gathered from the attendant circumstances and the previous or contemporaneous acts or the subsequent conduct can be legitimate guides. The relevant paragraph is reproduced herein below :–

> *30. Is it a case of passive submission in the face of psychological pressure exerted or allurements made by the accused or was it a conscious decision on the part of the prosecutrix knowing fully the nature and consequences of the act she was asked to indulge in? Whether the tacit consent given by the prosecutrix was the result of a misconception created in her mind as to the intention of the accused to marry her? These are the questions which have to be answered on an analysis of the evidence. The last question raises the allied question, whether the promise to marry, if made by the accused, was false to his knowledge and belief from the very inception and it was never intended to be acted upon by him. As pointed out by this Court in Uday case [(2003) 4 SCC 46 : 2003 SCC (Cri) 775 : (2003) 2 Scale 329] the burden is on the prosecution to prove that there was absence of consent. Of course, the position is different if the case is covered by Section 114-A of the Evidence Act. Consent or absence of it could be gathered from the attendant circumstances. The previous or contemporaneous acts or the subsequent conduct can be legitimate guides.*

17. Now, coming to the case in hand, it transpires that, in order to prove its case, the prosecution has examined as many as 11 witnesses out of which six witnesses PW-2 Robart Bhengra, PW-3 Nitin Lugun, PW-4 Kushpender Swansi, PW-5 Jagarnath Runda, PW-6 Sohrai Swansi and PW-7 Gomiya Tiru are the villagers of the victim who turned hostile during the trial. PW-1 is the victim. PW-8 is the mother of the victim. PW-9 is Dr. Monika Bajrai who examined victim on 22.06.2015. PW-10 is the father of the victim, and PW-11 is the I.O. of the present case.

18. PW-1 has deposed in her testimony substantially in consonance with the averment made by her in the written report. The victim has stated that in the night of 25.01.2015, on the promise of marriage, the appellant/accused enticed her and took her to his place at Dorma Futkal Toli. The

appellant/accused assured her father that victim would be brought back to Pelol village after meeting his mother. The victim further stated that after taking dinner she was taken into a room, where the appellant/accused forcibly committed rape the upon her. When she started weeping, appellant/accused assured her that she should not cry and he would marry her. The victim has further stated that, again, on 10.02.2015, the appellant/accused took her to his house where physical relations were again established with her on that day, as well as on 11.02.2015 and she was not allowed to return to her home. At the instance of the victim, the appellant interacted with her father and mother regarding their marriage. However, on 18.06.2015 he flatly refused to marry her. Thereafter, upon his refusal to marry her, the victim submitted an application to the police station which is in her own handwriting and has been marked as Ext.-I.

19. In her cross-examination, the victim has stated that she had known the appellant/accused since October-November, 2014. She had passed the Intermediate examination and stated her date of birth as 10.05.1995. The appellant was having good relations with her father as well as with her. According to her, her house was situated at a distance of about 10 KMs from the house of the appellant/accused at Dorma Futkal Toli. She further stated that, she reached the house of the appellant/accused on his motorcycle within 15-20 minutes and at that time, his mother and sister were present there. She further admitted that she had visited the place of the appellant/accused with her consent.

20. She also stated that there was no door to the room of the appellant/accused, however, in the night, she was taken to another room and after committing rape by the appellant/accused, she did not raise any alarm or shout as the appellant/accused had told her not to do so, stating that her cries would be heard by his mother. She further stated that appellant/accused had gagged her mouth for five minutes. Even thereafter, she did not raise an alarm or shout. She slept with the appellant/accused throughout the night and left for Dorma Futkal Toli at 5 AM in the morning. She disclosed the incident to her friend and her younger sister and her cousin sister. She further stated that as she was willing to marry the appellant/accused, she again visited his house on 10.02.2015. Significantly, she categorically admitted that, having attained the age of majority, she had gone out for an outing with a boy at 8 PM at her own volition.

21. PW-8 is the mother of the victim. She has stated that the incident is from 25.01.2015 to 10.02.2015. She came to know about the incident from her daughter, who is her step-daughter. She has reiterated the version of the victim by stating that her daughter had told her that the appellant/accused was a Teacher in Pelol School and had taken her to his house on the promise of marriage and showing his house, where he established physical relation with her. On 10.02.2015, the victim returned to her house. The appellant/accused had been saying that he would marry the victim, however when the victim's mother asked him about the marriage, he refused to marry her.

In her cross-examination, she has stated that whenever the appellant used to visit her house, she would serve him tea and snacks. She further stated that she

however did not like the appellant/accused though she had not conveyed this fact to the victim.

22. PW-10 is the father of the victim. He has stated that the incident is of 25.01.2015 and as told by his daughter, the victim and the appellant/accused had agreed to marry each other. Thereafter they went to Dorma, to the house of the appellant/accused, to meet his mother, however the family members of the appellant/accused refused to agree to the marriage. Consequently, his daughter lodged a case at the police station. He also stated that he came to know from PW-8, the mother of the victim that the appellant/accused had taken the victim to his house on the pretext of marriage and had committed rape upon her.

In his cross-examination, he has stated that PW-8 is his second wife and he visited to Dorma for the first time on 17.06.2015 with a proposal for the marriage of the victim, but the same was refused by the accused persons. He also stated that the marriage of the victim had already been finalized.

23. PW-9 is the doctor who has opined the age of victim is above 18 years and has further opined that since there was no tenderness present in the private part of the victim, so it appears that intercourse was not of recent one.

PW-11 is the I.O. of the present case. He has stated that, during the course of investigation, he recorded the statements of witnesses and also visited the place of occurrence. He has further described the place of occurrence in his testimony.

24. In the light of the aforesaid legal proposition and the evidence discussed in the preceding paragraphs, it is apparent from the testimony of the victim that, the

appellant/accused had made a promise to marry her. On the night of 25.01.2015, the appellant/accused took the victim on his motorcycle from her house to his house with the consent of her father. At the house of the appellant, apart from him, his mother and sister were also present. It is alleged that, after dinner, the appellant/accused forcibly committed rape upon her. When she started weeping, the appellant/accused told her not to cry and assured her, he would marry her. Thereafter, the victim slept for the whole night with the appellant/accused in the same room and left the place of the appellant/accused at 5 AM the following morning, and proceeded towards her village from Dorma Futkal Toli.

25. As far as the first incident is concerned, submission has been made on behalf of the State that there was no consent on the part of the victim. In order to examine the issue of consent with regard to establishment of the first physical relationship, it is necessary to take into consideration the subsequent conduct of both the victim and the appellant/accused. In this regard, it is pertinent to note that after the first visit of the victim to the house of the appellant/accused, the victim again went there on 10.02.2015 and also remained there until 11.02.2015. During this period, physical relations were established between them. Significantly, the victim has stated categorically in her evidence that on both these dates physical relations were established with her consent.

26. It has also been stated by the victim that, prior to taking her on 25.01.2015, the appellant/accused had promised to marry her and thereafter took her to his house to meet his mother and to show his house. It has also come

in the testimony of victim that, when she persuaded the appellant/accused that, since they were in a relationship, he should visit her house and seek her father's consent for their marriage, the appellant/accused accordingly visited the victim's house and told her father and mother that he would like to marry her. The conduct of the appellant/accused clearly indicates that there was no false promise of marriage on his part at the time of alleged incident in January, 2015 particularly when he himself subsequently visited the victim's house and sought her father's consent for the marriage. Even, father of the victim as well as the victim herself, has stated in their respective testimony that the family members of the appellant/accused refused to agree to the marriage between the victim and the appellant/accused. However, the victim has categorically stated that it was the mother of the appellant who dissuaded him from marrying her.

27. In view of the aforesaid discussion, this Court is of considered view that, in the present case, the evidence available on record does not disclose any material emanating from the testimony of either the victim or her parents which could give rise to an inference, beyond reasonable doubt, that the appellant/accused had no intention of marrying the victim from the inception, when the promise to marry her was made in January, 2015 or the promise so made was false to his knowledge at the time it was made. On the contrary, the victim (PW-1) has stated in her evidence that the mother of the appellant dissuaded him from marrying her. This circumstance indicates that the appellant/accused might have been actuated by a genuine intention to marry the victim, which however, did not materialize on account of

opposition from his family members. Therefore, the present case appears to be one of breach of promise to marry rather than a case of false promise to marry.

28. In conclusion, this Court is of the considered view that the prosecution has failed to establish, beyond reasonable doubt, that the appellant/accused had made a false promise of marriage to the victim with no intention whatsoever of fulfilling the same from its very inception. The evidence of the victim, considered in its entirety and in the light of her subsequent conduct as well as the surrounding circumstances, does not support such inference. Consequently, the essential ingredients of the offence alleged against the appellant/accused are not established beyond reasonable doubt.

29. Resultantly, the judgment of conviction and order of sentence dated 19.12.2016 passed by District & Additional Sessions Judge-I, Khunti in Sessions Trial Case No. 12 of 2016 are, hereby, set aside.

30. The instant appeal being, Criminal Appeal (S.J.) No. 157 of 2017 is, hereby, allowed.

31. Since, the appellant/accused is on bail, he is discharged from the liability of his bail bonds.

32. Let the trial court record be sent back to the court concerned forthwith.

33. Pending I.A., if any, stands disposed of.

(Arun Kumar Rai, J.)

Jharkhand High Court, at Ranchi
Dated : 21.09.2026
R.K/- *A.F.R.*

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