

Party Name : JANARDHAN KALAI Vs THE STATE OF TRIPURA

HONBLE THE CHIEF JUSTICE DEEPAK GUPTA

This is an application for grant of anticipatory bail filed by the accused applicant in respect of P.S. Case No.01 of 2015 registered with P.S. Ompi under Section 376(2)(N) of IPC.

Normally this Court is very reluctant to grant bail in cases of rape but the facts of the case, as set out in the complaint itself, are in my view sufficient to indicate that the petitioner has an arguable case and, therefore, it cannot be said with certainty that he will be held guilty of the offence with which he charged.

The prosecutrix has filed the complaint before the Court on 26.02.2015 on the basis of which complaint the FIR has been registered on 01.3.2015. Her allegation is that since the year 2008 she has had an affair with the applicant. According to her, she has had sexual relation with the applicant and she had sexual relation with him because the applicant had promised to marry her.

The entire case basically hinges around the fact that the applicant accused after he got a government job as a 'police constable' refused to marry the prosecutrix. According to the prosecutrix, even in the year 2012 she went to meet the applicant at the training camp where he had forcible sexual intercourse with her. The prosecutrix raised an alarm and some people came and caught the accused but no case was registered. Similarly, her allegation is that in April, 2013 she was forced to have sexual intercourse with the applicant. However, despite promises he has not married her and hence the allegation of rape.

This Court is not deciding the case on merits. Anything said in this bail application is only for the purpose of deciding whether the applicant is entitled to grant of bail and for no other purposes. The fact, however, remains that according to the prosecutrix, for almost 7(seven) long years she has had an affair with the accused applicant. It is, therefore, difficult to *prima facie* accept her version that on two or three occasions she was forcibly subjected to sexual intercourse when she had raised no objection throughout the years and never filed any complaint. Furthermore, one question which will arise is whether Section 376(2) (N) as amended on 03.02.2013 will apply in respect to act which took place prior to that date?

The petitioner is a police constable. He is in government job and if he is arrested he is likely to lose his job. He cannot run away as his permanent base is in Tripura. There is no question of his tampering with the prosecution evidence because the only evidence is the statement of the prosecutrix. No forensic evidence has to be carried out at this stage.

In view of the above facts, I feel that this is a fit case for grant of *ad interim* anticipatory bail and accordingly, it is directed that in the event of his arrest, the applicant (**Sri Janardhan Kalai**) shall be enlarged on bail on his furnishing a bail bond in the sum of **Rs.20,000/- (Rupees twenty thousand)** with one surety in the like amount to the satisfaction of the Arresting Officer subject to the following terms and conditions:-

- (i) The applicant is directed not to tamper with or in any manner influence the prosecution witnesses;
- (ii) The applicant is further directed not to in any manner try to influence any of the prosecution witnesses;
- (iii) The applicant is further directed not to cause any hindrance in the investigation;
- (iv) That applicant shall appear before the Investigating Officer at 11.00 a.m. on **Monday (30.3.2015)** and thereafter on every date for which a written notice is served upon them;
- (v) In case, the applicant violates any of the conditions or tries to delay the trial the prosecution shall be at liberty to apply for cancellation of bail.

On the applicant filing application for supply of the copy on payment of appropriate fees, the copy of the same shall be supplied to him by tomorrow.