

CRL. O.P. NO.2015 OF 2015

P.DEVADASS,J.

Petition for anticipatory bail.

2. Offences alleged are under Section 22(1) of the Protection of Children from Sexual Offences Act 2012 in Crime No.150 of 2014.

3. Heard the learned counsel for the petitioner and the learned Government Advocate (criminal side).

4. Petitioner is the daughter of an old man. Prosecution version of the case is that the petitioner had set up a minor girl as against her father.

5. Twin requirements to seek anticipatory bail under Section 438 Cr.P.C. is that the offence must be cognizable and secondly it must be non-bailable.

6. Offences are also classified as bailable, and non-bailable and are so mentioned in the 1st schedule to the Criminal Procedure Code. In 1st schedule in 2nd table offences under other laws are stated.

7. As per 2nd table to 1st schedule, offences coming under other enactments as classified as bailable or non-bailable based on the punishment

prescribed. If the punishment prescribed is below 3 years then it is bailable. If it is above then it is non-bailable. Unless, bail provision is not prescribed in other enactments, the bail provisions in chapter 33 of the Code of Criminal Procedure, 1973 has to be followed.

8. Section 436 Cr.P.C. deals with bailable offences. Section 437 Cr.P.C. is for non-bailable offences exercised by the learned Magistrates. Section 439 Cr.P.C. is concurrent power to grant bail by the Sessions Court and the High Court. The distinctive features of a bail under Section 436 Cr.P.C. and bail either under Section 437 Cr.P.C. or under Section 439 Cr.P.C. is that in case of bail under Section 436 Cr.P.C. bail is as a matter of right. No question of dismissing it. It can be refused only when the accused refused to offer bail.

9. Since the offence alleged as against the petitioner does not falls under section 438 Cr.P.C, this petition is not-maintainable.

10. Petitioner has to approach the concerned court for appropriate relief.

11. Accordingly, this Crl.O.P is disposed of.

12.02.2015

Index : Yes / No
Internet : Yes / No
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