

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No. 10623 OF 2015

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ORDER:

This Criminal Petition is filed under Sections 437 and 439 of the Code of Criminal Procedure, 1973 (For short, 'the Cr.P.C.') to enlarge the petitioner on bail in Crime No.81 of 2015 of Chittoor I Town Police Station, Chittoor District. The petitioner allegedly committed offences punishable under Section 376 (2)(i) of the Indian Penal Code, 1860 (For short, 'the I.P.C.') and Sections 4 and 10 of Protection of Children from Sexual Offences Act, 2012(for short, 'the Act of 2012) and he is in judicial custody since 06.07.2015.

2. The case of the prosecution is that the victim girl is a student of VIII class, aged 13 years, whereas the accused is husband of Head Mistress, H.M.Q uarters, Sherman Memmorial Girls High School, Readspet, Kongareddipalli, Chittoor, aged about 57 years. According to the prosecution, the victim girl is studying in IX class by the date of giving complaint, who is residing in hostel. When she was studying VIII class, the accused had forcible sexual intercourse with her. On 02.07.2015 at about 03.30 p.m., the accused called her into his house asking her to bring water bottle. When she went inside the house, the accused closed the doors and had intercourse with her. On 04.07.2015 at about 01.00 p.m., when the accused again called the victim, she informed the same to her relative Muragaiah, who in turn informed about the incident to her mother over phone. Subsequently, Muragaiah along with the victim approached police station and gave a complaint against the accused.

3. The case of the petitioner is that if really the incident took place over a long period of more than one (01) year, she would not have kept quiet and she would have reported the same earlier and apart from that on the

specific dates of incident i.e., on 2nd, 3rd and 4th of July, 2015, he was some where else and produced photostat copies of documents i.e., affidavit of Dr.A.Rajavelu and proceedings of Church of South India – Diocese of Vellore and attendance sheet which discloses that the petitioner was physically present in the Diocese. Therefore, the question of committing such offences on 2nd, 3rd and 4th of July, 2015 is imaginary. It is further contended that notice was issued to the petitioner twice and conducted potency test by the hospital also, but, till today, the charge sheet is not filed.

4. The learned Public Prosecutor for the state of Andhra Pradesh contended that the petitioner is aged about 57 years and husband of Head Mistress of the School and on examination of clothes of the victim girl by the FSL, Hyderabad, semen was found on the clothes of the victim girl. Therefore, it is clear evidence of having sexual intercourse, as such, there is *prima facie* material against the petitioner to connect him with the offence punishable under Section 376 (2)(i) of I.P.C. and Sections 4 and 10 of the Act of 2012. Learned Public Prosecutor refuting the contention of the petitioner submits that charge sheet was filed but it was not returned.

5. As seen form the material on record, there is no dispute that the petitioner is husband of Head Mistress and the victim girl is a student of the school duly prosecuting her studies in VIII class and part of IX class. The only contention before this Court by the learned counsel for the petitioner is that the petitioner had sexual intercourse with the victim girl for a period of more than one year and why she kept quiet was not explained. But the delay in complaining about the incident that a minor girl involving in such a serious offence which effects the family prestige is not at all a ground to consider the request of the petitioner to grant bail at this stage.

6. The other contention of the learned counsel for the petitioner is that the petitioner was away to the place of offence on 2nd, 3rd and 4th July, 2015 and produced several documents referred above. When the petitioner raised such plea alibi, the burden is upon him and such burden

can be discharged only during trial and at this stage it is difficult to prove his absence at the scene of offence on the 2nd, 3rd and 4th July, 2015.

7. The petitioner is already in jail since 06.07.2015 i.e., more than 60 days. Even otherwise, the petitioner is entitled for statutory bail according to the petitioner, but mere period of incarceration or fact that trial not likely to be concluded in near future, either by itself or conjointly may not entice accused to be enlarged on bail, as held in ***Chenna Boyanna Krishna Yadav Vs. State of Maharastra and others***^[1], when there is *prima facie* evidence on record to connect with such grave offences punishable under Section 376 of IPC and Sections 4 and 10 of the Act of 2012. The petitioner being the husband of Head Mistress of the school appears to have committed the offence, taking advantage of his status as the husband of Head Mistress.

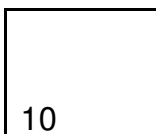
8. The petitioner also filed a similar bail application before the District Court in CrI.M.P.No.760 of 2015, which was dismissed by the I Additional Sessions Judge, Chittoor by order dated 29.09.2015, on the ground that the investigation is not completed and the petitioner is accused of a grave offence against a girl aged about 13 or 14 years and dismissed the petitioner. There are no changed circumstances to grant bail to the petitioner, hence I find that it is not a fit case to grant bail to the petitioner at this stage.

9. Accordingly, the Criminal Petition is dismissed.

JUSTICE M. SATYANARAYANA MURTHY

Date.19.10.2015.

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