

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.4342 of 2015

ORDER:

This petition is filed under Section 437 and 439 Cr.P.C. to enlarge the petitioner who is A-4 on bail and he is in judicial custody since 24-08-2014 and he alleged to have committed the offences punishable under Sections 376, 376-D IPC and Sections 4, 6 of POSCO Act, 2012 in Cr.No.106 of 2014 of Mahila Police Station, Vijayawada.

The specific allegation made in the charge sheet would disclose that the petitioner along with others are alleged to have lured the girls by deceitful words and then committed sexual assault against them. The specific overt act attributed against the petitioner/A-4 is that the petitioner alleged to have sexually assaulted the victim No.12 (LW.1) and also victim No.4 who is yet to be traced. The statement of the victim No.12 discloses that during the month of September,2013, A-1 with the active support and instigation of A-2 followed her on the pretext of love. On one occasion, A-2 took her photographs at the instigation of A-1 through his mobile and thereafter morphed the photo nude, and shown the same to her. When she complained to A-1, he in turn assaulted A-2 to attract her. Thereafter, the victim No.12 believed that A-1 loving her and moved freely and developed acquaintance with him. On one occasion, A-1 took LW.1 by deceitful words had sexual intercourse with her on the false pretext of marriage. Thereafter, A-1 had taken two sovereigns of gold chain as he was in need of money. During the month of March, 2014, A-1 had taken LW.1 to his house and forced her to share bed with his friends. When she refused, A-1 threatened LW.1 that he is in possession of her nude photos and sexual intercourse videos. If she did not share bed with his friend he would circulate the same to others. Thereafter, A-1, A-2, A-4 and A-5 had forcibly sexual intercourse with LW.1 by putting her in fear of circulation of nude photos and videos.

The case of the petitioner is total denial while pleading innocence.

Learned counsel for the petitioner contended that charge sheet has already been filed and the trial Court did not frame charges against the accused.

The learned Public Prosecutor strongly opposed the petition on the ground that the victim No.4 is not yet traced. However, the charge sheet is filed. But the petitioner committed heinous crime along with the other accused and in such a case, he cannot be enlarged on bail and if for any reason, he enlarged on bail he would hamper the trial of the case and that the offence is against the society at large.

As seen from the material available on record, the petitioner filed CrI.P.No.15312 of 2014 before this Court and the same was ended in dismissal. Again the petitioner filed CrI.M.P.No.32 of 2015 before the Special Judge for Protection of Children from Sexual Offences-cum-Additional Metropolitan Sessions Judge, Vijayawada and the same was ended in dismissal on 10-02-2015. Even at this stage, the petitioner did not plead any changed circumstances except contending that the earlier applications were dismissed on the wrong appreciation. In normal course of events, when the applications filed under Sections 437 and 439 Cr.P.C. are dismissed, more particularly when the charge sheet is filed against the petitioner unless there are changed circumstances, normally the Court shall not enlarge the petitioner on bail. In the present petition, there is absolutely no averment about the changed circumstances and even from the argument, no changed circumstance was brought to the notice of this Court. One of the major ground raised by the petitioner is that the petitioner is in jail since long time and there is no possibility of fleeing from the trial in near future. Mere languishing in jail for a long period and non-completion of the trial and that there is no possibility of fleeing from trial within short time is not a ground to grant bail to the petitioner, when the petitioner committed serious and grave offences against young girls and had intercourse with them forcibly. When the gravity of offence alleged is severe, mere period of incarceration or the fact that the trial is not likely to be concluded in the near future either by itself or conjointly may not entitle the accused to be enlarged on bail. Nevertheless, both these factors may also be taken into consideration while deciding the question of grant of bail as held by the Apex Court in **Chenna Boyanna Krishna Yadav vs. State of Maharashtra and Another**. Even if the

principles laid down in the judgment are applied to the facts and circumstances of the present case, the gravity and seriousness of the offence committed against eighteen (18) young girls and that apart I find no changed circumstances after dismissal of the earlier bail application by this Court and by the Sessions Court. Therefore, I feel this is not a fit case to grant bail to the petitioner.

Accordingly, the Criminal Petition is dismissed.

M. SATYANARAYANA MURTHY, J

Date: 21-05-2015

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