

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.10723 of 2015

ORDER:

This Criminal Petition is filed under Sections 437 and 439 Cr.P.C. by the petitioners/A-1 and A-3 in Cr.No.465 of 2015 of Chaitnyapuri Police Station registered for the offence punishable under Section 304-B IPC to enlarge them on bail.

The case of the prosecution is that the marriage of the deceased was performed with A-1 on 09-03-2012. At the time of marriage, cash of Rs.2.00 lakhs was paid, five tulas of gold and other household articles were presented as demanded by A-1 to A-3. Though unlawful demand was complied by the deceased and her parents, the petitioners harassed the deceased for her failure to meet the illegal demand to bring additional dowry after one month from the date of her marriage and continued till her death. On 22-07-2015, A-2 and A-3 who are in-laws of the deceased abused her in filthy language demanding additional dowry by visiting the house of her parents and on account of such harassment, she was forced to commit suicide by scorching on the 7th floor of the building. Thus, the petitioners are allegedly committed the offence punishable under Section 304-B IPC.

The case of the petitioners is that the Dying Declaration recorded by the Magistrate during her treatment before her death was not produced before the Magistrate Court, though sufficient time has been elapsed and the same was observed by the learned Metropolitan Sessions Judge, Cyberabad at L.B.Nagar in common order in CrI.M.P.Nos.2085 and 2086 of 2015 at para No.4. Though initially report is given and crime was registered for the offence punishable under Section 306 r/w. 511 IPC. two days before her death, no witnesses were examined by the police. But after the

death, converted the Section of law from Section 306 r/w.511 IPC to Section 304-B IPC, investigation was started. It is further contended there is no material to connect the accused with the grave offence punishable under Section 304-B IPC and prayed to enlarge the petitioners on bail.

Learned Public Prosecutor contended that the death is unnatural and which took place within seven years from the date of marriage and that apart, there is sufficient evidence to connect the accused with the alleged offence. Therefore, there are no grounds to enlarge the petitioners on bail.

Admittedly, death was unnatural i.e. death due to burns and it took place within seven years from the date of her marriage. In such a case, the presumption under Section 113-B of Indian Evidence Act shall be drawn. However, it is a rebuttable presumption. Apart from that, the Dying Declaration recorded by the Magistrate discloses that the cause of death was due to subjecting her to harassment on account of her failure to meet the illegal demand made by the petitioners and 2nd accused, who was enlarged on pre-arrest bail. Mere non-availability of Dying Declaration in the case Diary, as observed by the learned Metropolitan Sessions Judge in para No.4 of the common order in CrI.M.P.Nos.2085 and 2086 of 2015, dated 08-10-2015 is not a ground to enlarge the petitioners on pre-arrest bail. In usual course of events, if a Magistrate records the Dying Declaration and after death of the deceased, the declaration will be sent to the Court having jurisdiction over the

area to take cognizance of the offence and commit the matter to the concerned Sessions Division. Therefore, the non-availability of the Dying Declaration in the case Diary is not a ground to conclude that

the petitioners did commit any offence, prima facie.

Yet, the learned counsel for the petitioners contended that non-examination of any witness till conversion of the Section of law from Section 306 r/w.511 IPC to 304-B IPC is a serious lacunae in the investigation and that itself falsifies the story of the prosecution. Apart from that, the petitioners are in judicial custody for the last more than (66) days and entitled for statutory bail on account of long incarceration in the prison. No doubt, the investigating agency did not commence the investigation till the Section of law is converted but that by itself is not a ground to enlarge the petitioners on bail.

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 as held by the Apex Court in **Chenna Boyanna Krishna Yadav vs. State of Maharashtra and Another.**^[1] Even for grant of bail, there are certain guidelines and according to the judgment of Supreme Court in **State through C.B.I. vs. Amaramani Tripathi with State of Uttar Pradesh v.Madhumani Tripathi**^[2], where the Apex Court laid down the following guidelines:

(i) Whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction; (iv) danger of accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being tampered with; and (viii) danger, of course of justice being thwarted by grant of bail. While a vague allegation that accused may tamper with the evidence

or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused.

In the present case, the offence allegedly committed by the accused is grave in nature and punishment prescribed for the offence is severe in the event of their conviction. Apart from that the investigation is not yet completed. At this stage, there is every possibility to interfere with the further investigation, as the petitioners are businessmen.

Therefore, taking into consideration the circumstances of the case, gravity of the offence and punishment prescribed for the offence by applying the principle laid down in the above judgment, I find no ground to enlarge the petitioners on bail at this stage.

Hence, the Criminal Petition is dismissed.

M. SATYANARAYANA MURTHY, J

19-10-2015
Nvl/ivd

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY



C.C.C.A.No. 165 of 1997

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Date. 23-01-2015

nvl

[\[1\]](#) 2007 CrI.LJ 782

[\[2\]](#) AIR 2005 SC 3490