

HON'BLE SRI JUSTICE SURESH KUMAR KAIT

Criminal Petition No.15386 of 2016

ORDER:

This Criminal Petition is filed under Section 438 Cr.P.C. seeking to grant anticipatory bail to petitioners – accused in connection with Crime No.118 of 2016 of Market Police Station, Secunderabad, registered for the offences punishable under Section 304-II I.P.C. and Section 75 of Juvenile Justice Act, 2015.

Sri Milind G. Gokhale, learned Senior Counsel appearing on behalf of petitioners, submits that thousands of families across the country as well as abroad perform *prashyusa* ritual purely as a detoxification process and which would release the negative energy and absorb the positive energy. In fact, this fast is highly medicinal in nature and is also suggested to members outside of Jain Seva Sangh, purely to detoxify their body. The basic intention is not to commit suicide or die, but to achieve some state of mental peace or Nirvana, which would take an individual closer to God. It is purely religious ritual protected under Articles 25 and 26 of the Constitution of India. It is further submitted that earlier also Ms.Aradhana, the deceased girl, had done this fast for 8 days and 34 days respectively and nothing happened. In the present case, even after fasting for 68 days she was comfortable and it was only two days later, she complained of severe chest pain, for which petitioners have taken her to KIMS hospital immediately, however, the Doctors have declared her dead due to cardiac arrest.

Learned Senior Counsel further submits that the electronic media and other agencies intervened in the matter. The petitioners are parents of the deceased and they filed the present application for anticipatory bail just to avoid the harassment from the Police. He further submits that Police has to investigate with Medical expert whether the alleged cardiac arrest is the outcome of her fasting for 68 days. In addition, in Jain community 'Tapasya', during Choumas period is common.

Admittedly, the deceased was a juvenile and she is expected to be under proper care and custody of the parents. Under the protection of her parents, she went on fasting for 68 days without any food and liquid, except taking small quantity of water at dark hours. It is for her parents to see the welfare of their minor daughter and petitioners, being her parents, allowed her to go for fasting for 68 days without taking sufficient food or water for her sustenance.

The fact remains, the deceased being a minor, she might not know the consequences of going on fasting for 68 days without proper food. It is for her parents to attend her daily needs and necessities, however, they did not take proper care and allowed her to go fasting and finally, the minor girl lost her precious life.

On the other hand, Sri Vinod Kumar, learned Additional Public Prosecutor appearing on behalf of the State, submits that the age of the deceased was 12 to 13 years. It was the duty of petitioners to take care of the said minor and they would not have suggested her to go on fasting for 68 days at this age without proper food. It is the duty of parents to attend the daily needs and necessities of their child, but they did not take proper care

and allowed her to go on fasting. He further submits that the case is at the investigation stage and their custodial interrogation is required.

The petitioners are aged about 36 and 37 years, they are young in age and do not belong to old school. There is a total exposure nowadays, they should have told their daughter that since she is studying 8th standard, the fasting would be hindrance for her study. Admitted case of petitioners is that despite she was on fasting for 68 days without taking food, she continuously attended the school and other routine work for about 40 days. Thereafter, for 28 days she could not attend the school, however, continued to attend the temple. The fact remains that age of the deceased was 12 to 13 years. She was on fasting for 68 days. She, however being at that age, attended her school for 40 days, but, thereafter, she failed to attend the school, however, continued to go to temple for worship.

In a situation where a minor child, aged about 12 to 13 years, who does not know anything about the reality of life, composition of body and what can happen if she remains on fasting for 68 days, it was the duty of parents to guide her not to go on fasting for such a period. One or two days fasting can be tolerated by such child, but 68 days fasting is totally abnormal one, but petitioners, who are parents of the deceased girl, failed in their duty. They are educated and entered in 21st century. They did not think of any Doctor to be consulted. This kind of act is height of fenatism and blind faith. As stated in the petition that such a fast would take an individual closer to God. These cruel parents really send a young child of 12 years to God. This act is not less than to sacrifice their child for their vested interests, nothing else.

If in such a case the bail is granted to such parents, the message will not certainly go to the society in general and such parents in particular. Therefore, keeping in view the seriousness of the case wherein life of a minor Aradhana Samderiya aged about 12 to 13 years was lost, I am not inclined to give any relief in this petition.

At this stage, the learned Senior Counsel appearing on behalf of petitioners submits that the offence under Section 304-II I.P.C. cannot be made out against petitioners for the reason that there is no *mens rea* and there is no act of petitioners in the said offence. He submits that maximum it would be abatement to suicide, which comes under Section 306 I.P.C.

Even if I go by the arguments of counsel for petitioners that it is not a case under Section 304-II I.P.C., which is subject matter of investigation and trial, maximum it would be a case under Section 306 I.P.C., even then, I am not inclined to grant anticipatory bail to petitioners keeping in view the inhuman act of the petitioners.

Accordingly, the Criminal Petition is hereby dismissed.

As a sequel, Miscellaneous Petitions, if any pending, shall stand disposed of as infructuous.

SURESH KUMAR KAIT, J.

04th November, 2016

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