

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.384 of 2017

ORDER:

The petitioner/Accused filed the present application under Section 438 Cr.P.C. to release him in the event of his arrest in connection with Crime No.9 of 2017 of Dwaraka Tirumala Police Station, West Godavari District, registered for the offences punishable under Sections 376 (2) (n), 417 and 420 IPC, apprehending his arrest in connection with the above crime.

2. One Pendyala Naga Seshu lodged a complaint with Sub-Inspector of Police, Dwaraka Tirumala Police Station, alleging that she belongs to poor family, who lost her father earlier and she was residing in a house by the side of house of one Srinivas, News Reporter in Sakshi Newspaper, who developed acquaintance with her saying that he developed love against her and requested to marry him and saying so he followed her, but she refused for the proposal made by the said Srinivas and made several attempts to escape from him. Thereupon, he started threatening to foist a false case against her and spoil her life being a news reporter of Sakshi newspaper and threatening so, he participated in sexual intercourse with her for the last one year. While so, about 15 days prior to lodging the complaint, the petitioner informed that his parents are trying to settle his marriage for higher amount of dowry and started maintaining distance with her. The *de facto* complainant made several attempts to contact him, but failed in her attempt. She informed the incident to others and thereafter, informed to the parents of the petitioner, but they also did not co-operate with her while saying that their son will move with more than 100 girls and marry more than 100 women and

abused her in filthy language and that he had acquaintance with MLAs and M.Ps., being a Newspaper reporter in Sakshi and apprehending life threat, she did not complain the same to the police. Moreover she disclosed that she was taken to Room No.15, Chinnamarao Guest house at Dwaraka Tirumala and had sexual intercourse with her and this fact is known to the Clerk by name Appanna. Based on the said complaint, police registered a crime and issued F.I.R.

3. The contention of the petitioner is that the incident of enjoyment of sex is with the consent of the complainant for a long period and that such consent cannot be said to be on the promise made by him to marry her and in the absence of any inducement, the same would not fall within the ambit of Section 420 I.P.C., and placed reliance on the judgment reported in **Deelip Singh Alias Dilip Kumar v. State of Bihar**¹.

4. Learned Additional Public Prosecutor contended that the investigation is not yet completed.

5. A bare look at the contents of the complaint, the petitioner being a reporter working in Sakshi Newspaper, threatened the *de facto* complainant to foist a false against her and spoil her life and obtained consent by putting her in fear and therefore, such consent cannot be treated as a consent within the first limb of Section 90 IPC. Any sexual intercourse without the consent or putting the victim in fear amounts to an offence of rape as defined under Section 375 IPC, which is punishable under Section 376 IPC. The offence allegedly committed by the petitioner is under Section 376 (2) (n) IPC i.e.,

¹ (2005) 1 Supreme Court Cases 88

committed rape repeatedly on the same person. Here, the petitioner put the *de facto* complainant in fear and obtained consent and enjoyed sex with her for the last more than one year in Room No.15 of Rani Chinnamarao Guest House at Dwaraka Tirumala. Such consent cannot be said to be free consent and thereby the alleged act of enjoying sex amounts to an offence punishable under Section 376 IPC. Therefore, I find *prima facie* material against the petitioner as on today for the offence punishable under Section 376 (2) (n) IPC, which is a serious offence against the society. Grant of pre-arrest bail is not a matter of course. It is a matter of exception and unless the petitioner shows some exceptional circumstances, the Court cannot grant the pre-arrest bail. In **SIDDHARAM SATLINGAPPA MHETRE VS. STATE OF MAHARASHTRA AND OTHERS**², the Apex Court laid down certain guidelines as to when the court can exercise its discretion to grant pre-arrest bail, which reads as follows:

- i) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;
- ii) The antecedents of the applicant including the facts as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;
- iii) The possibility of the applicant to flee from justice;
- iv) The possibility of the accuser's likelihood to repeat similar or the other offences;
- v) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;
- vi) Impact of grant of anticipatory bail particularly in case of large magnitude affecting a very large number of people;
- vii) The Courts must evaluate the entire available material against the accused very carefully. The Court must also clearly comprehend the exact role of the accused in the case. The case in which accused is implicated with the help of Section 34 and 149 of IPC, the Court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;

² 2011 Cr.L.J. 3905

- viii) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;
- ix) The Court to consider reasonable apprehension of tampering of the witnesses or apprehension of threat to the complainant;
- (x) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.

If the guidelines issued by the Apex Court are applied to the present facts of the case, the Court has to take into consideration the gravity of the offence, right of liberty of the individual guaranteed by the Constitution of India and interest of the society. In the present case, the petitioner put the *de facto* complainant in fear to foist a false case against her, in such a case, there is every possibility of threatening the witnesses, taking advantage of his position as reporter in Sakshi and interfere with further investigation. Hence, I find that it is not a case to grant pre-arrest bail to the petitioner. Consequently, the petition is liable to be dismissed.

6. Accordingly, the Criminal Petition is dismissed. Miscellaneous petitions, if any, pending in this petition shall stand closed.

M.SATYANARAYANA MURTHY, J

JANUARY 27, 2017

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THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY



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Date: 27.01.2016

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