

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.1859 OF 2017

ORDER:

This criminal petition, under Section 438 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.'), is filed to grant pre-arrest bail to the petitioner/Accused apprehending his arrest in connection with Crime No.352 of 2016 of Gajuwaka Police Station, Visakhapatnam, registered for the offence punishable under Section 366-A of Indian Penal Code, 1860 (for short 'I.P.C.').

The case of the prosecution, in brief, is that the daughter of Pithani Chinne, i.e. Pithani Veeramma, who was working in cloth shop situated on footpath besides CMR Mall, Gajuwaka, went to attend duty on 09.07.2016, but she did not return to her house. On enquiry, the *de facto* complainant came to know that the petitioner took her daughter-Veeramma from the cloth shop and thereafter kidnapped her and taken to Tirupathi to marry her. On 16.07.2016 at 2.30 p.m. the son of the *de facto* complainant found her daughter along with the petitioner and brought the victim to their house.

It is the contention of the learned counsel for the petitioner that she is a student prosecuting degree in Women's college, Visakhapatnam, but not an employee working in cloth shop and thereby the question of kidnapping Veeramma, daughter of the *de facto* complainant does not arise and a false case has been foisted against her by the respondent, who belong to same Village, where the petitioner is residing, due to internal disputes.

Learned Public Prosecutor for the State of Andhra Pradesh drawn the attention of this Court to a statement of the victim girl

recorded by police, which shows that she was taken away by the petitioner and whether she is a student or employee in cloth shop, it makes no different. Undisputedly the victim girl is a minor aged 17 years, whereas the petitioner, either student or an employee working in any cloth shop, allegedly kidnapped the daughter of the *de facto* complainant and thereby registered a case against the petitioner for the offence punishable under Section 366-A I.P.C.

Section 366-A I.P.C. deals with procurement of a minor girl by inducing her, who is under the age of eighteen years, to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person.

The learned counsel for the petitioner drawn the attention of this court to the statement recorded before the Magistrate under Section 164 Cr.P.C., which was recorded prior to dismissal of Crl.P.No.410 of 2017, where the victim was denied the commission of any offence by the petitioner.

In fact the statement was recorded on 15.09.2016 and by the date of dismissal of earlier bail application, statement is very much available with the petitioner. However, recording of statement much prior to dismissal of earlier bail application in Crl.P.No.410 of 2017 would not amount to any changed circumstance to entertain the subsequent bail application petition.

It is settled law that filing of successive applications for grant of bail without any changed circumstances would not serve any purpose and such practice is deprecated by the courts time and again. In **STATE OF TAMIL NADU V. S.A. RAJA**¹, at paragraphs 8 & 9 of the

¹ (2005) 8 Supreme Court Cases 380

Judgment, the Apex Court held that when a learned Single Judge of the same Court had denied bail to the respondent for certain reasons and that order was unsuccessfully challenged before the appellate forum, without there being any major change of circumstances, another fresh application should not have been dealt with within a short span of time unless there were valid grounds giving rise to a tenable case for bail. Of course, the principles of *res judicata* are not applicable to bail applications, but the repeated filing of the bail applications without there being any change of circumstances would lead to bad precedents. Therefore, on this ground also, the petitioner is not entitled to claim bail.

The learned counsel for the petitioner contended that the petitioner is in judicial custody since a long time and she is entitled to bail.

In **CHENNA BOYANNA KRISHNA YADAV -VS- STATE OF MAHARASHTRA AND ANOTHER**² the Apex Court made it clear that when gravity of the 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. The same principle is reiterated in **RAJESH RANJAN YADAV @ PAPPU YADAV VS CBI THROUGH ITS DIRECTOR**³ while deciding the case it was held that it is one of the considerations in deciding whether to grant bail to an accused or not is, whether he has been in jail for a long time, the Court has also to take into consideration other facts and circumstances, and at the same time a balance has to be

² (2007) 1 SCC 242

³ (2007) 1 SCC 70

struck between the right to personal liberty guaranteed under Article 21 of the constitution of India and the interest of society, as no right can be absolute.

When this court requested the counsel on record to show the changed circumstances subsequent to dismissal of earlier bail application, he did not bring to my notice any major changed circumstances, therefore, I am unable to accept the request of the counsel for the petitioner to enlarge the petitioner on pre-arrest bail in view of the law declared by the Apex Court in the judgments referred above. Hence, I find no ground to enlarge the petitioner on pre-arrest bail.

At this stage, learned counsel for the petitioner, seeks a direction from this Court to permit the petitioner to surrender before the VII Metropolitan Magistrate, Bheemunipatnam, and to move an application under Section 439 of Cr.P.C. to grant bail and also seeks a direction to the learned Magistrate to consider his application on the same day.

Acceding to the request of learned counsel for the petitioner, without going into the merits of the case, I deem it appropriate to permit the petitioner to surrender before the VII Metropolitan Magistrate, Bheemunipatnam, and to move an application for grant of bail, after due service of notice on the Public Prosecutor. In which event, the learned Magistrate is directed to decide the same on the same day in accordance with law.

Accordingly, the criminal petition is disposed of.

M.SATYANARAYANA MURTHY, J

10.03.2017
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