

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.2594 of 2017

ORDER :

This criminal petition is filed under Section 438 of the Code of Criminal Procedure, 1973 (for short, 'the Cr.P.C.') to enlarge the petitioner/A.2 on bail in the event of her arrest in connection with Crime No.113 of 2016 of Konaraopet Police Station, registered for the offences punishable under Sections 498-A and 306 IPC and Sections 3 and 4 of the Dowry Prohibition Act, 1961, apprehending her arrest.

2. The case of the prosecution is that the marriage of the deceased, by name, Mende Padma, was performed with A.1, who is the son of the petitioner herein and A.1 was staying at Dubai, while Padma was staying with A.2 i.e., at the scene of offence. The main contention of the prosecution is that the deceased Padma was subjected to cruelty and compelled her to commit suicide by the petitioner at the instigation of A.1 by phone calls and thereby she committed suicide, therefore, the petitioners are liable for punishment under Sections 498-A and 306 IPC.

3. The contention of the learned counsel for the petitioner is that the petitioner is no way concerned with the above crime as there was no specific role played by her against the deceased Padma. Further, there are no allegations against the petitioner in the First Information Report, but for the first time, it is alleged that the petitioner instigated Padma to commit suicide, on account of unbearable harassment she committed suicide.

4. It is also contended that the petitioner is suffering from old age ailments like Asthama and other diseases. It is further contended that A.1 was already enlarged on bail, thereby the petitioner is also entitled to the benefit of the same order and, in support of this contention, he placed reliance on **Kamaljit Singh v. State of Punjab and another**¹.

5. Whereas, the learned Additional Public Prosecutor for the State of Telangana would contend that the investigation disclosed that on account of the harassment meted out to the deceased Padma in the hands of petitioner with whom she was living, she committed suicide.

6. It is prima facie clear from the material on record including the remand report, the deceased Padma was subjected to both mental and physical cruelty by the petitioner in connection with additional dowry amount, though the parents of the deceased paid substantial amount at the time of marriage. Making such demand and subjecting her to cruelty would attract cruelty under the explanation to Section 498-A IPC and driving Padma to commit suicide would fall within the first limb of Section 498-A IPC. Merely because there was no reference in the complaint about the role played by this petitioner, the petitioner is not entitled to pre-arrest bail automatically, since F.I.R. is only an intimation to set the criminal law into motion on the occurrence of a cognizable offence and it need not be encyclopedia of facts. Therefore, basing on the absence of role played by the petitioner in the complaint, she cannot be enlarged on pre-arrest bail, as the

¹ (2005) 7 SCC 226

material collected during investigation directly pointing out the complicity of the petitioner, prima facie.

7. It is also contended that as A.1 was already enlarged on bail, therefore, the petitioner is entitled to grant bail basing on the principle laid down in Kamaljit Singh's case referred supra. In the facts of the above judgment, one of the accused was already enlarged on pre-arrest bail and the petitioner therein was also sought for pre-arrest bail and the Apex Court directed the petitioner therein to be released on bail in the event of arrest or surrender by exercising the discretion under Section 438 Cr.P.C. But, in the present case, A.1 was released on regular bail in an application filed under Section 439 Cr.P.C. The ground for enlarging the accused on regular bail is totally different from granting pre-arrest bail under Section 438 Cr.P.C.. Therefore, the law declared by the Apex Court has no application to the present case.

8. The last contention of the learned counsel for the petitioner is that the petitioner is suffering from ill-health, but no documentary proof of filed to show that the petitioner is suffering from any ailment, much less old age ailments like Asthama, etc., as contended. Consequently, on the medical grounds, the petitioner cannot be enlarged on pre-arrest bail and in view of the fact that the petitioner subjected deceased Padma to cruelty and drove her to commit suicide would fall both under first limb of explanation to Section 498-A IPC; Section 107 (3) of IPC provides, who ever intentionally aids, by any

act or illegal omission, the doing of that thing amount to abetment. Therefore, I find prima facie material against the petitioner for the offences punishable under Sections 498-A and 306 IPC and thereby the petitioner is not entitled to claim pre-arrest bail. Consequently, the criminal petition is liable to be dismissed.

9. Accordingly, the criminal petition is dismissed.

M. SATYANARAYANA MURTHY, J

6th April 2017.

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