

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

Criminal Petition No.86 of 2017

ORDER:

This petition is filed under Section 438 of Criminal Procedure Code by the petitioners-A-2 and A-3 in Crime No.231 of 2014 of Police Station, I Town, Mahaboobnagar for the offences punishable under Sections 120-B, 354(A)(i), 354(B), 379, 307 r/w 34 of I.P.C. apprehending their arrest in connection with the above offences.

The case of the prosecution in brief is that one A.J. Devendernath son of Joseph lodged a complaint dated 20.12.2014 in the Police Station, I Town, Mahboobnagar making an allegation specifically that:

“one V.Joshna Devi, aged 36 years working as Special Officer at Kasturibha Gandhi Girls school, Dharoor and the de facto complainant belongs to Gadwal Twon. The marriage of V.Joshna Devi was performed with one A.D.Anil Kumar and their marriage is inter-caste marriage and blessed with one son named as Anil. While Joshna Devi was working as Special Officer in Kasthuribha Gandhi School, Dharoor on 5.12.2014 conducted audit in that school, even some audit is pending, then she answered that she will come tomorrow and will complete the balance of audit and came out from the school. At the same time, one of her colleagues, Gnaneswari, Special Officer came and asked her when she will return from Gadwal, its late time, “so please come to home in this evening then shel think normally like she also one of my colleagues and made call to his father-in-law, narrated the situation then he said OK. Then she went to Gnaneswari home at about 8.00 p.m. along with her and they had supper at 9.00 pm and went to top

floor for sleeping together. Approximately, at midnight 2.00 am somebody knocked the door and Gyaneswari opened the door then her mother and brother-in-law came and her brother-in-law catch my hand and trying to harass me then I slapped and immediately I shouted to help me, then Gnaneswari replied that what he did why you are shouting and her mother closed my mouth. Then after Gnaneswari brother-in-law beat me right side on my head with some instrument (rod) forcefully. Then after I don't know what happened. Since then I went into unconscious for the period of 6 months. Due to financial problems in paying medical charges at hospital, my father-in-law and my husband got discharged from hospital on 07.01.2015 and took me to Gadwal. Again my father-in-law got admitted me into Sai Krishna hospital on 11.05.2015 as per my health condition is not good. Again I underwent surgery to head and was discharged from hospital on 15.05.2016. Since then I able to talk slightly and recognise the men. On seeing my condition, my husband presumed that something happened on me. In such state, he disgusted on his life and committed suicide by consuming insecticide poison and died. At the time of said incident, Gnaneswari, her brother-in-law and mother committed theft of her gold chain weighing about 3 tolas. The said three persons hatched plan with criminal conspiracy, in accordance to the same with the assistance of Gnaneswari, her mother, and brother-in-law tried to commit rape on her, when I strongly opposed, they tried to kill me by beating on my head with lethal weapon."

Based on the allegations made in the complaint, the police registered a case against A-1 for the offence under Section 324 of IPC and issued F.I.R.

The present petition is filed to grant pre-arrest bail on the ground that the petitioners-A-2 & A-3 were falsely implicated after two years from the date of happening of the incident, somehow, to extract money from the petitioners for the treatment of the injured and that they did not commit any offence punishable under Sections 354-A(1), 354—B, 379, 307 r/w 34 of IPC.

As seen from the material on record when Joshna Devi was sleeping along with Gnaneshwari, both the petitioners/A-2 & -A3 knocked the door at about 2 a.m. during midnight, then they woke up and Gnaneshwari opened the door and immediately both the petitioners entered into the room and A-1 asked her to sleep with him for which she refused and pushed him aside and raised cries, thereupon the second petitioner gagged her mouth and prevented her from raising cries and that the first accused also played an important role; whereas the 1st petitioner/A-2 caused grievous injury to her head which drove her to go to coma for a long period.

During investigation, the police recorded the statement of the injured after two years under Section 161(3) Cr.P.C. and filed a memo before the Magistrate for altering section of law.

As seen from the statement recorded by the police the victim injured was hospitalized and she was admitted in ICU for a long period but due to inability to meet the medical expenses, she was discharged from the hospital on 07.01.2015 and again her father-in-law got her admitted in Sai Krishna Hospital on 11.05.2015, as her health condition was not good, she underwent a surgery to head and was discharged from the hospital

on 15.05.2015, since then she is able to talk slightly and recognize the men and on seeing her condition, her husband presumed that something happened to her and in such a state, he disgusted on his life and committed suicide by consuming insecticide poison and died. Even according to the statement recorded by the police, the brother-in-law of the 1st accused, Gnaneshwari and her mother committed theft of gold chain weighing 3 tolas and that the said three persons hatched a plan with criminal conspiracy and brother-in-law of Gnaneshwari made an attempt to commit rape on Joshna Devi, when she strongly resisted, he tried to kill her by beating on her head with lethal weapon and committed theft of gold chain weighing 3 tolas.

The learned Public Prosecutor strongly opposed the bail petition contending that Joshna Devi was treated in the hospital as inpatient from 11.05.2015 to 15.05.2015 for post OP decompressive craniotomy and again she was admitted on 06.07.2015 and was discharged on 17.07.2015 for left fronto parietal bone defect and those injuries are serious in nature.

Part-I of Case Diary further discloses that the doctors declared that injury sustained by Joshna Devi was not received accidentally and it was caused by somebody with blunt weapon, there was no gold chain weighing about 3 tolas on the neck of Joshna Devi and since then she was in coma undergoing treatment in ICU.

Thus, it is clear from the material on record that the victim Joshna Devi was in coma and in such a case, the question of recording her statement under Section 161(3) Cr.P.C. by the police during the investigation does not arise and only after she regained slightly normal health to some extent and to talk slightly and recognize men, the police recorded her statement under Section 161(3) Cr.P.C. after 15.05.2015.

Therefore, the delay in recording the statement is not a ground to grant pre-arrest bail to the petitioners in the present set of circumstances. Even otherwise, when the victim was not in a position to give a statement due to her health condition, it is not a ground to grant pre-arrest bail to the petitioners.

On consideration of the entire material on record, there is a prima facie material against the petitioners to establish that he made an attempt to commit rape and caused injury when the victim refused to accept to participate in sexual act and to satisfy his lust and beat her with lethal weapon and caused grievous injury.

One of the contentions of the petitioners is that the entire investigation is completed and that the 1st petitioner is working as employee and in case he is arrested in connection with the above crime, she may lose her employment. But, that itself is not a ground to grant pre-arrest bail when this Court found prima facie material against the petitioners.

Grant of pre-arrest bail is a matter of exception unless exceptional circumstances are shown, the petitioners cannot be enlarged on bail as per decision reported in State of Maharashtra Vs. Mohd. Sajid Husain¹, the Hon'ble Apex Court laid down the following guidelines laid down for grant of anticipatory bail:

“1. The nature and gravity or seriousness of accusation as apprehended by the applicant;

2. The antecedents of the applicant including the fact as to whether he has, on conviction by a Court, previously undergone imprisonment for a term in respect of any cognizable offence;

¹ AIR 2008 SC 155

3.The likely object of the accusation to humiliate or malign the reputation of the applicant by having him so arrested; and

4.The possibility of the appellant, if granted anticipatory bail, fleeing from justice. “

In another decision reported in *Siddharam Satlingappa Mhetre Vs. State of Maharashtra and others*² the Hon'ble Apex Court held as follows:

“The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:

- 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*

² 2011 CrL.LJ. 3905

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;

- 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.*

Keeping in mind the guidelines laid down by the Apex Court to grant pre-arrest bail, the Court must record prima facie satisfaction that the petitioners did not involve in such a crime. Here, the material on record shows prima facie about the direct involvement of the petitioners in the crime and the role played by each of the petitioners is narrated in the statement recorded by the police under Section 161(3) of Cr.P.C., though it is subject to proof during trial but as on today the consideration is about finding of prima facie material against the petitioners.

Further, the husband of the victim also committed suicide due to such serious incident suspecting something happened to his wife. Thus, the conduct of the petitioners allegedly led him to commit suicide.

As discussed above, by applying the principles laid down in the above two judgments of the Apex Court, I find that it is not a fit case to grant pre-arrest bail at this stage to the petitioners. The grounds raised by the learned counsel for the petitioners are not at all the grounds to grant pre-arrest bail in connection with the above crime registered for the offences punishable under Sections 120(b), 354(A)(i), 354(B), 379, 307 r/w 34 of IPC, consequently, the petition is liable to be dismissed.

In the result, the petition is dismissed.

JUSTICE M. SATYANARAYANA MURTHY

Date:18.01.2017
Ccm



THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY



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