

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.17380 OF 2016

ORDER:

This Criminal Petition, under Sections 437 and 439 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'), is filed to enlarge the petitioner on bail in Cr.No.214 of 2016 of Prakash Nagar Police Station, Rajamahendravaram, East Godavari District, registered for the offence punishable under Section 376 of Indian Penal Code, 1860 (for short, 'I.P.C.').

The case of the prosecution, in brief, is that the petitioner and the *de facto* complainant were working as sanitary workers in Municipality of Rajamahendravaram. On 02.11.2016 at about 10.30 A.M. the petitioner took the *de facto* complainant to a (rekula) tin sheet shed in Sri Nagar Colony, Rajamahendravaram behind the Shirdi Sai School, on the pretext that he has some work, but there he forcibly had sexual intercourse, gagging her mouth, and threatened with dire consequences, if she reports the same to any one. Thus, he committed sexual intercourse against her will and put the *de facto* complainant in fear.

One of the contentions urged before this court, in the present petition, is delay in lodging the complaint and contended that incident allegedly took place at 10.30 A.M. on 02.11.2016, but reported to the police on 03.11.2016 at about 21 hours. Thus there is delay in lodging the complaint.

In cases of this nature, family prestige is involved and hence the delay in lodging the complaint alone is not a ground to grant bail at this stage. However, failure to report the matter to the police in view of alleged threat to kill her with dire consequences is sufficient reason for the delay.

The other contention raised by the counsel for the petitioner is that it is a consensual sex i.e. sexual intercourse with consent. At this stage it is difficult to accept this contention. On the other hand, the victim gave a report to the police and the police registered the same and she was referred to medical examination at Government Hospital, Rajamahendravaram, and she complained as sexual victim i.e. victim in rape cases. Therefore, the contention that it is a consent act cannot be accepted.

Learned counsel for the petitioner, during hearing, drawn the attention of this court to the statements recorded by the police under Section 161 (3) of Cr.P.C., wherein the *de facto* complainant specifically stated to the police that she was taken to an iron sheet shed behind Shirdi Sai School to talk something and thereafter the petitioner caught hold her tightly and gagged her mouth, forcibly had sexual intercourse, thereupon she raised cries, then he threatened to kill her if she disclosed to any one and shifted her on the same motor cycle, later bleeding was started in the afternoon, thereupon she got treatment in Premalatha hospital and later revealed the incident on 03.11.2016 afternoon to her brother-in-law, Ramesh.

The statements of witnesses-Koruballi Ramanamma, Pampana Revathi and Varri Jayalakshmi recorded under Section 161 (3) Cr.P.C. disclosed that both persons entered into vacant portion of iron sheet shed and when they questioned, both the victim and the petitioner informed them that they wanted to occupy the premises on rent and after sometime they went away, they did not hear the cries or any dispute.

Taking advantage of the statements regarding non raising cries etc., he contended that the act of sexual intercourse with consent, but it is clear from the statements of the witnesses, they entered into the shed and after some time they came out. The statements corroborates the case of the *de facto* complainant to the extent of entering into the shed with the petitioner, if it is a consent act, it is for him to prove the circumstances as to how the consent was obtained. But there is nothing to suggest that it is a consent sexual intercourse or consensual sex. Therefore, it is difficult to believe that it is a sexual intercourse with consent, at this stage, while deciding the petition under Sections 437 and 439 of Cr.P.C.

The third ground urged before this court is that 60 days has been expired by today and he is entitled to claim bail under Section 167(2) Cr.P.C. as no charge sheet is filed by now.

But the present petition is filed under Sections 437 and 439 of Cr.P.C. and not claiming statutory bail under Section 167 (2) Cr.P.C. Therefore, in a petition filed under Sections 437 and

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439 of Cr.P.C. this court cannot exercise power under Section 167(2) of Cr.P.C. to enlarge the petitioner on bail.

The last ground urged before this court is that major part of the investigation is completed and question of interference that investigation in the event of his enlargement of bail does not arise.

But the petitioner filed earlier bail application before the Magistrate which was dismissed by the Sessions Judge on 30.12.2016 assigning his own reasons and thereafter there are no changed circumstances and in the absence of changed circumstances, he is not entitled to claim bail and since I find material against the petitioner for his involvement in the sexual intercourse against the will of the victim, *prima facie* and it is not a fit case to enlarge the petitioner on bail. Consequently, the criminal petition is liable to be dismissed.

In the result, the criminal petition is dismissed. However, liberty is given to the petitioner to renew his request at appropriate court.

Miscellaneous petitions, if any, pending in this criminal petition, shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 06.01.2017
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