

CRIMINAL PETITION NO.2681 OF 2017

ORDER:

This Criminal Petition under Sections 438 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'), is filed to enlarge the petitioner/A-2 on pre-arrest bail since he is apprehending arrest in connection with Crime No.360 of 2016 of III Town Police Station, Rajamahendravaram, registered for the offences punishable under Sections 376(1), 376(2), 376(J), 354-A, 354-C, 109 of IPC and 420, 468, 471, 506 r/w 34 of IPC.

The case of the prosecution is that the mother of the victim lodged a complaint with the police on 25.07.2016 at about 7 p.m. alleging that she blessed with two children one is female and the other is male. The victim is studying 2nd year intermediate. Since three days she (victim) was found not taking food and sleeping and she was totally in depression condition and when the de facto complainant and her husband questioned, the victim girl wept and disclosed that Asha (A-2) wife of Bhagyaraju who is neighbour of the victim on 23.07.2016 called the victim to her house and Asha served juice to the victim and the victim went into coma (semi consciousness). When she revealed the same to Asha, she went away informing that she is going to shop by closing the doors and later A-1 came there and informed that he is loving her and he removed her cloths and despite resistance, she could not succeed in her attempt as she was in semi consciousness of coma, then A-1 committed rape on victim against her will. Later, A-1 disclosed her that he took her nude photographs at the time of rape by his mobile and if she reveals the incident to anybody, he would show her photographs to others and threatened to kill her younger brother and mother and left the house.

The petitioner is Kothapally Asha who accommodated A-1 to commit rape on the victim. Therefore, she is equally responsible for the

offences and when the victim girl is a child as defined under Section 2(d) of Protection of Children from Sexual Offences Act, 2012 and had sexual intercourse with her is a serious offence punishable under Section 4 of the Protection of Children from Sexual Offences Act, 2012 besides the other sections of law under Indian Penal Code.

It is contended by the learned counsel for the petitioner that major part of investigation is completed and A-1 was already released on regular bail. But, consideration for grant of regular bail is totally different from grant of pre-arrest bail.

The power of the Court under Section 438 Cr.P.C is purely discretionary and this Court has to exercise its power judiciously based on settled principles. But, the circumstances to exercise such jurisdiction may vary from case to case. The law regarding grant of anticipatory bail is elaborately discussed by the Constitutional Bench of the Apex Court in *Gurbaksh Singh Sibbia v. State of Punjab*¹ as the power of granting 'anticipatory bail' is somewhat extraordinary in character and it is only in exceptional cases where it appears that a person might be falsely implicated, or a frivolous case might be launched against him, or "there are reasonable grounds for holding that a person accused of an offence is not likely to abscond, or otherwise misuse his liberty while on bail" that such power is to be exercised. No hard and fast rule can be laid down in discretionary matters like grant or refusal of bail whether anticipatory or regular bail. The Apex Court further held that, it cannot be laid down as an inexorable rule that anticipatory bail cannot be granted unless the proposed accusation appears to be actuated by mala fides; that anticipatory bail must be granted if there is no fear that the applicant will abscond. There are several other considerations, too numerous to enumerate, the combined effect of which must weigh with the court

¹ AIR 1980 SC 1632

while granting or rejecting anticipatory bail. The nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the applicant's presence not being secured at the trial, a reasonable apprehension that witnesses will be tampered with and "the larger interests of the public or the state" are some of the considerations which the court has to keep in mind while deciding an application for anticipatory bail. Therefore, anticipatory bail can be granted even in serious cases like economic offences and States should have no consideration for grant or refusal of grant of anticipatory bail, as there can be no presumption that the wealthy and the mighty will submit themselves to trial and that the humble and the poor will run away from the course of justice, any more than there can be a presumption that the former are not likely to commit a crime and the latter are more likely to commit it. Therefore, while dealing with the application for grant of pre-arrest bail or anticipatory bail, the Court must take into consideration the guidelines issued in *Gurbaksh Singh Sibbia v. State of Punjab* (referred supra).

The petitioner is the second accused who made arrangement by providing juice to the victim who went into coma and thereby accommodated A-1 to rape her. Therefore, she is equally liable for punishment along with A-1. Hence, I find no ground to enlarge the petitioner on pre-arrest bail since it is a purely discretionary in nature. Consequently, the petition is liable to be dismissed.

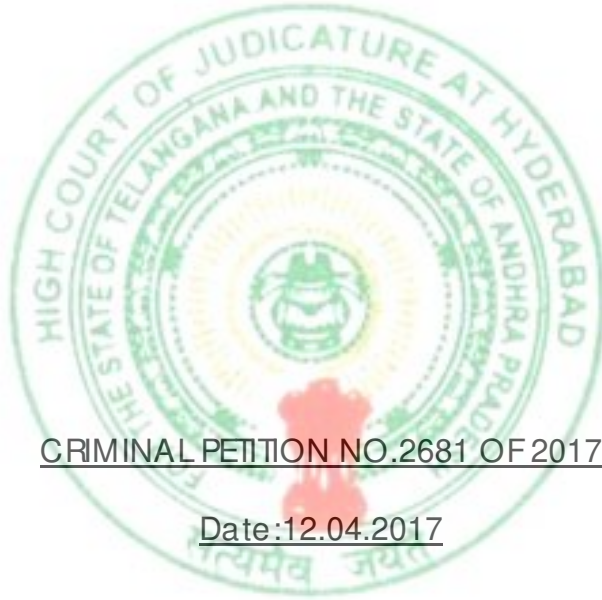
In the result, the criminal petition is dismissed.

Consequently, miscellaneous applications pending if any, shall also stand dismissed.

JUSTICE M. SATYANARAYANA MURTHY

Date:12.04.2017
ccm

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY



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