

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.272 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/ A.1 in C.C. No.21 of 2016 on the file of XIII Additional Chief Metropolitan Magistrate, Nampally, Hyderabad, who allegedly committed the offences punishable under Sections 498-A, 406 and 377 of Indian Penal Code, 1860 (for short, 'I.P.C.') and Sections 4 and 6 of Dowry Prohibition Act, 1961.

The allegations made in the charge sheet are that the complainant performed the marriage of her daughter-Sari Jabeen Duriya with the petitioner herein on 26.02.2010. After the marriage, they shifted their residence to Soudi Arabia and while they were staying at Soudi Arabia, there were disputes between them, they approached the court and obtained Khula Form of divorce and thereafter mother-in-law of the petitioner lodged a complaint making serious allegations against the petitioner that he has committed an unnatural offence punishable under Section 377 I.P.C. besides subjecting her to cruelty for her failure to meet the illegal demand for payment of dowry. The entire investigation was over and the police filed charge sheet before the court. But, the petitioner did not appear before the police even in pursuance of notice under Section 41-A Cr.P.C. and he was shown absconding in the charge sheet.

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The main contention of the petitioner is that he obtained Khula Form of divorce from the competent court, there is nothing to be investigated by the police at this stage in view of filing charge sheet and registering Calendar case and that he did commit no offence.

No doubt, the entire investigation was completed, but the petitioner did not respond even to the notice under Section 41-A Cr.P.C. issued by the investigating agency and avoided to appear before the police and his arrest, conveniently, during investigation. Now filed the present petition on the ground that the trial court issued NBW against the petitioner as he was shown as absconding and sought for a pre-arrest bail at this stage, apprehending his arrest in execution of the warrant issued by the court.

When the charge sheet was filed after completion of investigation showing the petitioner as absconding and NBW was issued by the Magistrate, the petitioner has to file a petition under Section 70 (2) Cr.P.C. to recall warrant, but instead of filing such application before the Magistrate, circumventing the provisions of Cr.P.C., filed the petition under Section 438 Cr.P.C. claiming pre-arrest bail as if he has apprehended his arrest. But, he was found absconding and did not respond to the notice under Section 41-A Cr.P.C. that itself shows the conduct of the petitioner that he avoided

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arrest successfully and absconded, during the investigation. When the petitioner was absconded and did not co-operate with the investigation, he is disentitled to claim pre-arrest bail under Section 438 Cr.P.C.

Therefore, I find no ground to enlarge the petitioner on pre-arrest bail, however the petitioner is at liberty to file appropriate application before the trial court either under Section 70(2) Cr.P.C. or under any other provision of Cr.P.C.

In the result, the criminal petition is dismissed.

25.01.2017
BV

M.SATYANARAYANA MURTHY,J

