

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRL.P.No.1298 OF 2017

ORDER:

This criminal petition is filed under Sections 437 and 439 of Cr.P.C to enlarge the petitioners/A4 to A6 on bail, who are in judicial custody since 28.11.2016 in connection with Crime No.92 of 2016 of Kodimial Police Station, Jagtial District, registered for the offences punishable under Section 304-B of IPC.

The case of the prosecution, in brief, is that on 12.10.2016 at about 07.00 hours, the *de facto* complainant came to Kodimial Police Station and lodged a complaint alleging that the marriage of his elder daughter by name Laxmi was performed with A1 on 07.04.2010, but due to unbearable harassment of her husband, she returned to parents' house and staying with them for the last two years. The deceased was subjected to cruelty by the petitioners and A1 for her failure to meet their illegal demand of payment of dowry and due to unbearable harassment she returned to her parents house and poured kerosene herself on her body and set ablaze and thereafter, succumbed to injuries while undergoing treatment. Thus, the petitioners along with A1 allegedly committed the said offence.

The main contention of the petitioners is that A1 was already enlarged on bail and these petitioners are not enlarged on bail. One of the petitioner's daughter is suffering from epilepsy and the presence of the accused is necessary to take care of her and prayed to enlarge them on bail.

Learned Additional Public Prosecutor while opposing the application for bail drawn the attention of this Court to the dying declaration recorded by the Judicial Magistrate of First Class while she was undergoing treatment in the hospital for the burn injuries and on the strength of the same, he contended that there is specific material against these petitioners that they subjected her to cruelty and drove her to commit suicide.

It is the case of the prosecution, as stated above that these petitioners along with A1 subjected the deceased to cruelty and drove her to commit suicide and that the statement of the injured recorded by the Magistrate also further supports the case of the prosecution that all these petitioners subjected her to cruelty for her failure to meet the illegal demand and drove her to commit suicide by their acts. Therefore, presumption under Section 113-B of the Evidence Act will apply to the present facts of the case. *Prima facie*, there is evidence on record to conclude that the petitioners did commit the above said offence, therefore, this Court cannot grant bail to the petitioners.

Though the petitioners contended that one of the petitioner's daughter is suffering from epilepsy, no piece of evidence is brought on record in support of their contention. Yet another contention urged before this Court is that the petitioners are in judicial custody since 28.11.2016 and that long period of languishing in jail as pre-trial detention is against fundamental right to life and personal liberty and sought to enlarge the petitioners on bail on that ground also.

No doubt, life and personal liberty is a fundamental right guaranteed under Article 21 of the Constitution of India and the arrest of the accused is by following necessary procedure during investigation. Therefore, such detention would not amount to infringing the petitioners' guaranteed right to life and personal liberty under Article 21 of the Constitution of India, since they were deprived of life and personal liberty by due process of law. Therefore, it is not a ground to enlarge the petitioners on bail.

In similar circumstances, the Apex Court In **Chenna Boyanna Krishna Yadav v. State of Maharashtra and another**¹ the Apex Court made it clear that when gravity of the offence alleged is severe, mere period of incarceration or the fact that the trial is not likely to be concluded in the near future either by itself or conjointly may not entitle the accused to be enlarged on bail. Nevertheless, both these factors may also be taken into consideration while deciding the question of grant of bail. The same principle is reiterated in **Rajesh Ranjan Yadav @ Pappu Yadav vs CBI through its Director**² while deciding the case it was held that it is one of the considerations in deciding whether to grant bail to an accused or not is, whether he has been in jail for a long time, the Court has also to take into consideration other facts and circumstances, and at the same time a balance has to be struck between the right to personal liberty guaranteed under Article 21 of the constitution of India and the interest of society, as no right can be absolute.

Therefore, long incarceration or languishing in jail and pre-trial detention by itself are not the grounds to enlarge the petitioner

¹ (2007) 1 SCC 242

² (2007) 1 SCC 70

on bail and to strike balance between the right to life and personal liberty guaranteed under Article 21 of the constitution and the societal interest at large, I find no ground to enlarge the petitioner on bail, at this stage.

With the above observations, the criminal petition is dismissed.

Pending miscellaneous petitions in the petition, if any, shall stand closed.

21.02.2017
kvrn

M.SATYANARAYANA MURTHY,J

