

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.3846 OF 2017

ORDER:

The present petition is filed under Section 438 of the Criminal Procedure Code, 1973 (for short, 'the Code') requesting to grant anticipatory bail in Crime No.193 of 2016 on the file of Indrapalem P.S., East Godavari District.

2. The petitioners, who are arraigned as accused Nos.2 to 4 in the aforesaid crime, alleged to have committed the offences punishable under Sections 406 and 420 read with Section 34 of I.P.C.

3. Heard Sri Raja Reddy Koneti, the learned counsel for the petitioners, and the learned Assistant Public Prosecutor for the State of Andhra Pradesh.

4. The learned counsel for the petitioners would submit that the petitioners are absolutely innocent of the acts attributed to the accused No.1, though, he is the son of the petitioners 1 and 2, and, of course, the petitioner No.3 is a stranger to the petitioner's family, and the petitioners have been roped in by the *de facto* complainant and in fact, even according to the allegations mentioned in the complaint, the *de facto* complainant never resided in the house of the petitioners 1 and 2, and, therefore, the allegation that the petitioners 1 and 2 necked her out of their house is nothing but falsehood, which is deliberately introduced to clutch the offence against the petitioners

herein. Concerning the petitioner No.3, according to the learned counsel, as per the allegations in the complaint, he is a stranger and no details of overt acts are attributed to him except the allegation that petitioner No.3 along with accused No.1 threatened the *de facto* complainant and her mother with dire consequences if they approach the petitioners 1 and 2 or make any attempts.

5. The learned Assistant Public Prosecutor, *inter alia*, would contend that it is a concrete example exposing how the 1st accused along with his parents and the petitioner No.3 deliberately deceived the *de facto* complainant and her mother. He would submit that the allegations in the complaint would point out the complicity of the petitioners herein in the commission of the offences alleged against them and investigation is under progress and, therefore, requests to dismiss the petition.

6. To appreciate the submissions made, it would be necessary to refer to the complaint allegations as it is a typical case and such instances gaining fore.

7. The *de facto* complainant studied B.Tech and since her father died about 17 years back prior to the lodging of complaint her mother brought her up and provided education. Somehow, she came into contact with the 1st accused belonging to Yellamanda Village, Narasaraopeta Mandal, Guntur District through face book in Social Media Website, which acquaintance lead to frequent phone

conversations between them and the 1st accused even gained acquaintance with her mother. She alleges that earlier thereto, she uploaded the face book making a request to her friends for search of a job for her. In that connection, the accused No.1 impressed upon her mother and herself that the *de facto* complainant need not do any job and that he would marry her and provide marital life. Thereafter, in the year 2014, he came directly to the house and expressed his view to marry her, and when her mother replied she would talk with his parents, he stated that his parents would not accept as both of them belong to different castes. He came out stating that since both of them are majors, they may celebrate their marriage and then he would convince his parents and to impress upon them even expressed that in case his proposal is rejected he would commit suicide.

8. The *de facto* complainant states that they even convinced the members of the Church, K. Jesu Ratnam, P.Sumalatha, D. Ravindranadh, V. Vijaya Kumari and Bade Govindu and requested to arrange for marriage and accordingly marriage was performed on 15.8.2014 in their house in the presence of Pastor K.B.N.Raju. Sometime thereafter, the 1st accused stating that he intends to go to his house demanded Rs.60,000/- and they paid the same to him. Three days thereafter, he returned and stating that his father and mother, who are petitioners 1 and 2 herein were suffering with ill-health and his mother had to undergo heart surgery and that himself and the *de facto* complainant have to settle their life and he needs money and

thereby asked her to get the title deed of their house and got mortgaged the same and obtain loan of Rs.10 lakhs by them and he took that amount and again telling them that the said amount was given by them towards dowry, he would convince his parents left that place. Since he did not return, having waited, when they contacted on phone he stated that he would come sometime later and having made them to wait for some days he came to their house.

9. She alleges that he developed acquaintance with the family of Rapaka Chakravarthy, who are related to the *de facto* complainant, and impressed upon them that he owned share in liquor syndicate and telling them if they invest amount they can earn one lakh per month, obtained five lakhs and assuring that the *de facto* complainant would execute a promissory note therefor, got it also executed through the *de facto* complainant telling the *de facto* complainant and her mother that he was going on business tour, and some days thereafter, he came back and told them that they have to purchase a car for their use and got five lakhs transferred to his account from her friend, Doriparthi Supraja by way of RTGS and thereafter, purchased a pre-owned Volkswagen Polo Car bearing Regn. No.AP 37 BP 9695 in the name of the *de facto* complainant and thereafter, telling that he had to perform the marriage of his younger sister and has to obtain loan by hypothecating the car with Sriram Finance for Rs.3,80,000/- got credited the same to his account and taken the car also. When he did not return and whenever contacted,

he was evading to give proper answer, they approached the petitioners 1 and 2 and whenever enquired, they too evaded to give his address expressing their ignorance and threatened them to do whatever they intend to do, along with Srilakshmi and Anjali, Sisters-in-law, abusing the *de facto* complainant and her mother necked out of the house. Having felt insulted, they came back to their house and contacted the accused No.1 on phone, then he threatened them that they should not visit his house and in case they visit again, through his friend, who is the petitioner No.3 herein, would send rowdies and kill them and thus, threatened and put them to torture.

10. It is also alleged that whenever he was in need of money, he used to threaten them and take away money from them. Since they did not have male assistance and they were in dilemma as to what to do, and when they again approached the local inmates of the petitioners 1 and 2, they learnt that the 1st accused even earlier married another girl and he was resorting to such sort of instances of cheating. When they approached the petitioners 1 and 2 and questioned them, they again expressed their ignorance as to the whereabouts of the 1st accused. When she was at her uncle's house all the three petitioners got executed a document by making her to sign that the car was sold away and then she was necked out of the house.

11. She has referred to certain other allegations, but, *suffice* it to say that these allegations would reflect the complicity of the petitioners 1 to 3. It is no doubt true that while she was staying at her

uncle's house all the three petitioners obtained her signature on a paper showing that she was already sold away the house and necked out from the house, and, basing on it, the learned counsel no doubt, contends that the allegation is palpably false as even according to the allegations in the complaint, the *de facto* complainant never resided nor allowed to reside in the house of the petitioners 1 and 2, and, therefore, the petitioners are entitled to the exceptional relief of anticipatory bail. But, on a perusal of Case Diary and even the complaint allegations referred to in the above would not give any inference at this stage that the petitioners 1 to 3 herein are absolutely innocent as to what has been stated in the complaint.

12. When the Case Diary Part-I, dated 27.9.2016, is examined, intricate details have been shown as to how the *de facto* complainant was ill-treated and even her mother including the acts of the three petitioners. It is also forthcoming from the remand case diary that when the *de facto* complainant when on one occasion burst out that she would report to the police, the accused No.1 pleaded her not to inform the police and not to approach the local police and requested her not to tell anyone about what her mother-in-law did to her and her mother-in-law using abusive language and scolding the *de facto* complainant that she belongs to a lower caste and that they would get dowry of one crore in case their son who is the 1st accused is married in their caste. Thus, the Case Diary reveals the acts of the petitioner Nos. 1 and 2 and the petitioner No.3.

13. The learned counsel for the petitioners, no doubt, places reliance in **Joginder Kumar v. State of U.P.**¹. He relies on what has been observed by the Hon'ble Supreme Court in paragraph-20 as to the guidelines suggested in Third Report of the National Police Commission at p.32 which relate to liberty of an individual and denying personal liberty is serious in nature except in heinous offences and an arrest must be avoided if a police officer issues notice to person to attend the Station House and not to leave the Station without permission would do.

14. The learned counsel submits that Section 41-A of the Code was introduced pursuant to these recommendations and the directions given by the Hon'ble Supreme Court in **Arnesh Kumar v. State of Bihar**². He has also placed reliance in **S.W. Palanitkar v. State of Bihar**³ referring observations contained in paragraphs 8, 9 and 10, thus:

“8. Before examining respective contentions on their relative merits, we think it is appropriate to notice the legal position. Every breach of trust may not result in a penal offence of criminal breach of trust unless there is evidence of a mental act of fraudulent misappropriation. An act of breach of trust involves a civil wrong in respect of which the person wronged may seek his redress for damages in a civil court but a breach of trust with mens rea gives rise to a criminal prosecution as well.

9. The ingredients in order to constitute a criminal breach of trust are: (i) entrusting a person with property or with any dominion over property, (ii) that person entrusted (a) dishonestly misappropriating or converting that property to his own use; or (b) dishonestly using or disposing of that property or wilfully suffering any other person so to do in violation (i) of any direction of law prescribing the mode in which such trust is to be discharged, (ii) of any legal contract made, touching the discharge of such trust.

10. The ingredients of an offence of cheating are: (i) there should be fraudulent or dishonest inducement of a person by deceiving him, (ii)(a) the person so deceived

¹ (1994) 4 SCC 260

² (2014) 8 SCC 273

³ (2002) 1 SCC 241

should be induced to deliver any property to any person, or to consent that any person shall retain any property; or (b) the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; and (iii) in cases covered by (ii)(b), the act of omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property.”

15. The submissions made by the learned counsel would have been significant, had there been no allegations *prima facie* at all against the petitioners 1 to 3 herein since the complaint as well as the Case Diary referred to above would clearly make out strong allegations against the petitioners herein also. Exceptional relief of anticipatory bail cannot be granted as the parameters that govern for grant of anticipatory bail are conspicuously absent in the present case.

16. On the other hand, the incident herein is a concrete example as to how innocent people, who do not have male assistance in the family are being trapped and subjected to every sort of torture and misery ruining the entire family.

17. Accordingly, while rejecting the request of the petitioners herein, the Criminal Petition is dismissed.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the Criminal Petition shall stand closed.

A. SHANKAR NARAYANA, J

Dt. 11.07.2017
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