

CRIMINAL PETITION No. 2713 of 2017

ORDER:

This Criminal Petition under Section 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 she is apprehending arrest in connection with Crime No.184 of 2016 of Police Station, Vinukonda, Guntur District, registered for the offences punishable under Section 304-Br/w 34 of IPC.

The marriage of the petitioner was performed on 04.12.2016 with the son of this petitioner A-1 and paid Rs.4.40 lakhs dowry at the time of marriage and started demanding additional dowry of Rs.5 lakhs and for her failure to meet the illegal demand, the petitioner and her son subjected the daughter of the de facto complainant and that she committed suicide.

The main contention of the petitioner is that A-1 was already released on bail and this petitioner being mother-in-law of the deceased and mother of A-1 and in the absence of any allegations made in the complaint, the petitioner is entitled to be enlarged on pre-arrest bail and apart from that she is suffering from heart problem and prayed for grant of pre-arrest bail.

The learned Public Prosecutor for the State of Andhra Pradesh opposed the bail petition on the ground that the death took place within seven years and thereby a presumption under Section 113-B of the Evidence Act has to be drawn and on the strength of such

presumption, the Court can prima facie conclude that the petitioner did commit an offence punishable under Section 304-B of IPC and prayed for dismissal of the petition.

The marriage of the deceased took place within seven years prior to the death of the daughter of the de facto complainant and the petitioner is mother-in-law and A-1 is the husband of the deceased. The cause for committing suicide is that the deceased was subjected to cruelty for her failure to meet the illegal demand of Rs.5 lakhs as additional dowry. When the death took place within seven years from the date of marriage, the presumption under Section 113-B of the Evidence Act, the Court shall draw a presumption that the death was due to harassment and however, such presumption is rebuttal presumption and the petitioner during trial can rebut such presumption either eliciting in the evidence of prosecution witnesses or by examining any independent witnesses. At this stage, it is difficult for this Court to conclude that the petitioner did commit no offence much less the offence punishable under Section 304-B of IPC.

The main endeavour of the learned counsel for the petitioner is that A-1 has already been released on regular and thereby she is also entitled for pre-arrest bail. No doubt, A-1 was released on regular bail. But, this petitioner was successful in avoiding her arrest in the above crime and approached the Sessions Court for pre-arrest bail which ended in dismissal. Now, she approached this Court for the same relief. The consideration for grant of regular bail and anticipatory bail is distinct and different and merely because A-

1 was released on regular bail who is similarly placed is not a ground to release the petitioner on pre-arrest bail. Unless this court come to a prima facie conclusion that the petitioner did commit no offence, the Court cannot grant pre-arrest bail to the petitioner. But, in view of presumption under Section 113-B of Evidence Act, it is difficult for me to conclude that the petitioner did commit no offence since the death of the daughter of the de facto complainant is unnatural and at the house of her in-laws within seven years from the date of marriage.

Further, the learned counsel for the petitioner also contended that the petitioner is suffering from heart problem and in support of it, he produced a slip issued by Balaji Diagnostics with regard to examination of blood and urine etc. The said slip did not show that the petitioner is suffering with any chronic disease. But, having regard to the facts of the case, on medical ground, the petitioner cannot be enlarged on pre-arrest bail.

Hence, I find no ground to grant pre-arrest bail to the petitioner at this stage and consequently, the petition is liable to be dismissed.

In the result, this Criminal Petition is dismissed.

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

M. SATYANARAYANA MURTHY, J

Date: 07.04.2017
ccm

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY



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ccm