

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.2995 OF 2017

ORDER:

This criminal petition, under Section 438 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'), is filed by the petitioner/A.1 seeking direction to the Station House Officer, Women Police Station, DD, Hyderabad, to release him on bail in the event of his arrest in Crime No.43 of 2016 registered for the offences punishable under Sections 498-A and 406 of the Indian Penal Code, 1860 (for short 'I.P.C.'), apprehending his arrest.

The petitioner is a resident of U.S.A. working as Assistant Professor in Department of Oncological Sciences, Mount Sinal Medical Centre, Newyork, U.S.A. and his wife lodged the complaint against the petitioner and others alleging that she was subjected to cruelty for her failure to meet the illegal demand for payment of additional dowry etc. On the strength of the same, the police registered the above crime and issued F.I.R.

During investigation, the investigating agency issued notice to the petitioner under Section 41-A of Cr.P.C. as mandated by the guidelines laid down by the Apex Court in **Arnesh Kumar v. State of Bihar**¹, but unfortunately, the petitioner did not turn up, not even responded to the notice. The investigation agency examined several witnesses and filed charge sheet.

Now the contention of the petitioner raised before this court is that his father died a year ago, therefore he intended to come down to India to attend annual death ceremony of his father.

¹(2014) 8 SCC 273

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After completion of investigation and filing charge sheet, the investigating agency requested the XIII Additional Chief Metropolitan Magistrate, Hyderabad, to issue non-bailable warrant against the petitioner. Accordingly the learned Magistrate issued non-bailable warrant and it is pending till today, as the petitioner is residing at U.S.A.

In such case the petitioner/A.1 shall appear before the XIII Additional Chief Metropolitan Magistrate, Hyderabad, and file an application under Section 70(2) of Cr.P.C. to recall the non-bailable warrant or file an application for grant of bail, after his surrender.

It is evident from the record that the petitioner successfully avoiding his arrest and not even scant respect to the notice under Section 41-A Cr.P.C. issued by the investigating agency. In such case the petitioner is disentitled to claim pre-arrest bail, however liberty is given to the petitioner to appear before the XIII Additional Chief Metropolitan Magistrate, Hyderabad, to file an application under Section 70(2) Cr.P.C. or surrender, if he wishes, he may file an application under Sections 437 and 439 of Cr.P.C. seeking regular bail.

Granting the aforesaid liberty to the petitioner, the criminal petition is dismissed.

M.SATYANARAYANA MURTHY, J

24.04.2017
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