

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.2739 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/Accused apprehending his arrest in connection with Crime No.217 of 2017 of Kukatpally Police Station, Cyberabad, registered for the offence punishable under Section 354-D of the Indian Penal Code, 1860 (for short 'I.P.C.').

Section 354-D IPC reads as under:

"Stalking: (1) Any man who—

- (i) follows a woman and contacts, or attempts to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman; or
- (ii) monitors the use by a woman of the internet, email or any other form of electronic communication, commits the offence of stalking;

Provided that such conduct shall not amount to stalking if the man who pursued it proves that--

- (i) it was pursued for the purpose of preventing or detecting crime and the man accused of stalking had been entrusted with the responsibility of prevention and detection of crime by the State; or
- (ii) it was pursued under any law or to comply with any condition or requirement imposed by any person under any law; or
- (iii) in the particular circumstances such conduct was reasonable and justified.

(2) whoever commits the offence of stalking shall be punished on first conviction with imprisonment of either description for a term which may extend to three years, and shall also be

liable to fine, and be punished on a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.”

The offence under Section 354-D IPC is bailable offence and thereby, Section 438 Cr.P.C cannot be invoked since the anticipatory bail can be granted under Section 438 Cr.P.C only when the petitioner/ accused is apprehending arrest in connection with a non-bailable offence, he may apply to High Court seeking a direction to the concerned police for release of the petitioner on bail. Here, the petitioner, undisputedly, is not entitled to anticipatory bail.

Hence, the Criminal Petition is dismissed.

Consequently, miscellaneous applications pending if any, shall also stand dismissed.

Date:10.04.2017
knl

M. SATYANARAYANA MURTHY, J

