

**THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY**

**CRIMINAL PETITION No.2085 OF 2017**

**ORDER:**

This Criminal Petition, under Sections 437 and 439 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'), is filed to enlarge the petitioner/Accused on bail in Crime No.394 of 2016 of Mellachervu Police Station, Suryapet District, registered for the offences punishable under Sections 366-A, 342, 376 (2) (i) of the Indian Penal Code, 1860 (for short 'I.P.C.') (the Criminal Law Amendment Act, 2013) and Section 5 read with 6 of Protection of Children From Sexual Offences Act, 2012 (for short 'POCSO Act').

The father of the victim - Dondapati Venkata Reddy lodged a complaint dated 22.12.2016 at about 14.00 hours alleging that his daughter - Divya, who is studying 10<sup>th</sup> class in Z.P. High School, Chinthalapalem Mandal, went to School at about 7.30 a.m. on 20.12.2016, but she did not return from School till evening 6.00 p.m. Thereupon he went to School and on enquiry, came to know that his daughter did not attend the School. On suspicion that his Villager - Shaik Janimiya, S/o. Madar Sab is responsible for missing of his daughter Divya, he enquired about the said Janimiya, but he was found not available in the Village and his cell phone was switched off and the same was informed to the Village elders - Vusthela Narayana Reddy, Morthana Seetha Reddy and they informed the same to the parents of the said Janimiya. On 22.12.2016 morning hours they handed over the victim girl - Divya to him and on enquiry she informed the entire incident that she was forcibly taken away from the School on the pretext that she was called by her mother and on a motor bike shifted to the room and had sexual intercourse against her will on the pretext that he is loving her, thus he allegedly

committed the offences punishable under Sections 366-A, 342, 376 (2) (i) I.P.C. and Section 5 read with 6 POCSO Act.

The main contention of the counsel for the petitioner is that the petitioner and the victim girl loved each other, though she is a student of 10<sup>th</sup> class and that the petitioner did commit no offence. It is further contended that the petitioner is a student and is languishing in jail for more than two months, hence prayed to enlarge the petitioner on bail, as major part of the investigation is over as on today.

The Public Prosecutor for the State of Telangana would contend that though she herself accompanied the petitioner on the pretext of love and consensual intercourse with the petitioner, is still an offence under the provisions of I.P.C. and POCSO Act. The victim girl is a minor less than 16 years, therefore, consent cannot be said to be free consent for the purpose of Section 376 I.P.C. and in such case the alleged accompany of the victim with the petitioner cannot be accepted.

The main contention of the petitioner is that he is no way concerned with the offence. But the material on record discloses that the victim girl was taken by the petitioner from her School misrepresenting that she was called by her mother and shifted her by his motor cycle to a room and had sexual intercourse with her against her will.

As per the provisions of the Indian Penal Code, when a person had sexual intercourse with a girl less than 16 years, though with the consent of the girl, is an offence. Therefore, it is difficult to accept the contention of the petitioner that it is a consensual sex between the petitioner and the victim girl and the act committed by the petitioner would *prima facie* attract the offence punishable under the

provisions of POCSO Act. Therefore, I find, *prima facie*, that the petitioner did commit a serious offence against the child, who is the victim herein, and he is not entitled to bail at this stage.

In normal course of events to enlarge the petitioner, the court has to record its *prima facie* satisfaction that there is no evidence to conclude that the petitioner committed the offence.

Here the plea of the petitioner is that it is a consensual sex. But that cannot be accepted, in view of exception provided under Sections 375 and 376 I.P.C. therefore, I find no ground to enlarge the petitioner on bail and the criminal petition is liable to be dismissed.

In the result, the criminal petition is dismissed.

**M. SATYANARAYANA MURTHY, J**

16.03.2017  
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