

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

**CRIMINAL PETITION No.480 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, who is in judicial custody since 16.12.2016, in SC No.1/S/2017 registered for the offences punishable under Sections 417, 420, 493, 506 and 376 of Indian Penal Code, 1860 (for short 'I.P.C.') and Section 3(1)(w) and 3(2)(va) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015.

The case of the prosecution, in brief, is that the petitioner is a Pastor in the Church for the last seven years, though he belongs to a different caste. Whereas, the *de facto* complainant belongs to Scheduled Caste, she used to visit church to offer prayer. Taking advantage of the position of the petitioner, he promised to marry her and had sexual intercourse with her, and when she was examined by the doctor, it was found that she was conceived. Thereupon, the *de facto* complainant requested to marry her, but he refused to marry, on the other hand, threatened with dire consequences.

The petitioner's case is that the entire investigation is completed and question of interference with further investigation does not arise in the event of releasing the petitioner on bail by exercising power under Section 439 of Cr.P.C. and he cannot be kept in jail as pre-trial detention for a longer period as it would

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amount to infringement of fundamental right guaranteed under Article 21 of the Constitution of India.

Whereas, the Public Prosecutor for the State of Andhra Pradesh contended that though he is a married person, made false promise to marry the *de facto* complainant for the second time, developed illicit intimacy with her and induced her to have sexual intercourse with him which attracts the offences punishable under Sections 493, 506 and 420 of I.P.C., that apart she belongs to a scheduled caste and thereby the petitioner cannot be enlarged on bail at this stage.

The facts narrated above clearly show that the petitioner was officiated as a Priest in the Church for the last 7 years and the *de facto* complainant used to visit the Church to offer prayer, the petitioner making false promise to marry her, though he cannot marry for the second time, having a living wife, induced her to participate to sexual intercourse with him and thereby she was conceived. Making such promise to marry and enjoying sexual intercourse with her would clearly amount to an offence punishable under Sections 376 and 420 I.P.C., *prima facie*. The offence, committed under the provisions of penal code against women, who belong to scheduled caste, attracts the offence punishable under Section 3(2) (va) of SC & ST (POA) Act. Therefore, there is a *prima facie* case against the petitioner punishable under Sections 493, 506, 420 and 376 I.P.C. and Section 3(1) (w) and 3(2)(va) of SC & ST (POA) Amendment Act, 2015.

Learned counsel for the petitioner contended that since the charge sheet is already filed, question of further investigation does not arise.

In **LOKESH SINGH v. STATE OF U.P. AND ANOTHER**<sup>1</sup> and in **GAJANAND AGARWAL v. STATE OF ORISSA AND ANOTHER**<sup>2</sup> the Apex Court, while dealing with an application for bail, held that there is a need to indicate in the order, reasons for prima facie concluding why bail was being granted particularly where an accused was charged of having committed a serious offence. It is necessary for the courts dealing with application for bail to consider among other circumstances, the following factors also, before granting bail, they are:

1. The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence;
2. Reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;
3. Prima facie satisfaction of the Court in support of the charge.

In view of the principles laid down by the Apex Court, the court has to look into the nature and severity of punishment in case of conviction and the nature of supporting evidence, and prima facie satisfaction of the court in support of the charge, while granting bail under Section 439 of Cr.P.C.

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<sup>1</sup> AIR 2009 SC 94

<sup>2</sup> 2007(2) ACR 2284 (SC)

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Here the material on record clearly shows that the petitioner by making false promise had sexual intercourse with the *de facto* complainant, who belongs to schedule caste, and refused to marry her. By applying the principles laid down by the Apex Court in **LOKESH SINGH** and **GAJANAND AGARWAL** (supra 1 and 2) to the present facts of the case, I find *prima facie* material against the petitioner and the offence allegedly committed by the petitioner against the woman is grave in nature and thereby it effects the societal interest at large.

In **CHENNA BOYANNA KRISHNA YADAV V. STATE OF MAHARASHTRA AND ANOTHER**<sup>3</sup> the Apex Court made it clear that gravity of the offence alleged is severe, mere period of incarceration or the fact that the trial is not likely to be concluded in the near future either by itself or conjointly may not entitle the accused to be enlarged on bail. Nevertheless, both these factors may also be taken into consideration while deciding the question of grant of bail. The same principle is reiterated in **RAJESH RANJAN YADAV @ PAPPU YADAV VS CBI THROUGH ITS DIRECTOR**<sup>4</sup>.

If the principles laid down by the Apex Court in **CHENNA BOYANNA KRISHNA YADAV AND RAJESH RANJAN** referred to supra are applied to the present facts of the case, it is difficult to believe that the petitioner did commit no offence *prima facie* and that apart the court has to strike balance between the right to

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<sup>3</sup> (2007) 1 SCC 242

<sup>4</sup> (2007) 1 SCC 70

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personal liberty guaranteed under Article 21 of Constitution of India and the societal interest, since no right is absolute right.

In view of the law declared by the Apex Court and taking into consideration of the gravity of the offence, I find, *prima facie*, material against the petitioner to conclude that he committed the offence punishable under Sections 417, 420, 493, 506 and 376 of Indian Penal Code, 1860 (for short 'I.P.C.') and Section 3(1) (w) and 3(2)(va) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015. Hence, the petition is liable to be dismissed.

In the result, the criminal petition is dismissed.

**M.SATYANARAYANA MURTHY,J**

01.02.2017  
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