

HONOURABLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.219 OF 2017

ORDER:

This Criminal Petition is filed by the petitioners under Section 437 and 439 of Cr.P.C. to enlarge them on bail in Crime No.85 of 2016 of Kotapally Police Station, Adilabad District, registered for the alleged offences punishable under Sections 376, 417 read with 109 of I.P.C. and Sections 4 of Protection of Children from Sexual Offence Act,2012.

Petitioners 1 to 4 herein are A.1 to A.4 in the above crime.

The case of the prosecution, in brief, is as follows:

The defacto complainant by name Jeka Rajeswari aged 17 years lodged a complaint with the police stating that since two years 1st petitioner who is A.1 in the above crime, is harassing her in the name of love and accordingly she herself surrendered to him and he had sexual intercourse with her several times on the false promise to marry her. On 8-10-2016 at about 7 P.M., 1st petitioner invited her to his cotton field located behind their house and had sexual intercourse with her and petitioners 2 to 4 have acted as mediators between 1st petitioner and the defacto complainant by knowing their relationship, they helped 1st petitioner and 10 days prior to that, she asked 1st petitioner to marry her but he refused to marry and then she informed the same to her parents. On the strength of the complaint presented by her, the police registered the same as a case in the above crime for the alleged offences referred supra.

The main contention of the petitioners is that 1st petitioner and defacto complainant-victim being teen aged persons fell in love with each other and enjoyed sexually and therefore, it would not attract the alleged offence punishable under Section 376 of I.P.C. and as such, it would not fall within the ambit of Section 376 of I.P.C. and hence, they approached this court to enlarge them on bail.

As seen from the allegations made in the complaint, victim-defacto complainant was aged about 17 years by the date of the alleged complaint and she was studying 10th class at that time and therefore, she is a child within Section 2 (d) of POCSO Act, 2012.

As per the material, undisputedly, the victim is a child and therefore, the alleged offences would fall within the ambit of Sections 4 and 6 of the POCSO Act. Merely because the defacto complainant-victim is teen aged and 1st petitioner is not supposed to have sexual relationship with a child as defined under Section 2 (d) of the Act and such act would amount to the offences punishable under Section 4 of the POCSO Act prima facie.

The material on record goes to show that 1st petitioner committed serious offence punishable under Section 4 of the POCSO Act.

It is the contention of the learned counsel for the petitioners that they are in judicial custody since 29-10-2016 and the 1st petitioner is a young by 23 years but the long period of languishing in prison is not a ground to enlarge the petitioners on bail in view of the judgment of apex court reported in [CHENNA](#)

BOYANNA KRISHNA YADAV V. STATE OF MAHARASHTRA AND ANOTHER⁽¹⁾.

1st petitioner filed earlier an application before the I Additional Sessions Judge (Designated under Protection of Children from Sexual offences Act, 2012), Adilabad in Crl.M.P.No.458 of 2016 in Cr.No.85 of 2016 of Kotapally Police Station which ended in dismissal by order dated 23-12-2016 and after dismissal of the earlier application, no changed circumstances are brought to the notice of the court and in the absence of any changed circumstances, petitioners are not entitled to bail, I find that the petitioners prima facie committed the alleged offences punishable under Section 4 of the POCSO Act and as such, they are not entitled to claim bail and they cannot be enlarged on bail as there is possibility of subjecting the victim to harassment. In addition to that, investigation is not yet completed in the present case as contended by the Public Prosecutor for the State.

Apart from that, petitioners 2 to 4 helped them to have sexual intercourse and though they did not actually participate, they are equally liable for the alleged offences punishable under the sections referred supra along with 1st petitioner who is the principal offender in view of making necessary arrangements to have sexual intercourse by the 1st petitioner with the child aged 17 years.

Taking into consideration of the gravity and seriousness of the crime against child, I find that it is not a fit case to enlarge the

¹ (2007) 1 SCC 242

petitioners on bail by exercising the powers conferred under Sections 437 and 439 of Cr.P.C. and as such, this petition is liable to be dismissed.

Accordingly, this Criminal Petition is dismissed.

As a sequel to the disposal of this petition, the Miscellaneous Petitions, if any, pending, shall stand dismissed.

JUSTICE M.SATYANARAYANA MURTHY

Dated 24-1-2017

Dvs.



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Dated 24-1-2017

Dvs