

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.307 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. 236 of 2016 of Chebrolu Police Station, Guntur Urban District, for the offences punishable under Sections 376, 323 and 506 of the Indian Penal Code, 1860 (for short 'I.P.C.'), Section 3(1) (w) (i) of SC & ST (POA) Amendment Act, 2015 and Section 4 of POCSO Act, 2012.

The case of the prosecution, in brief, is that the *de facto* complainant, who was the victim, was studying VIII Class in Z.P. school, at Garuvupalem. The petitioner for last five years following her and made a proposal to love him, while promising to marry her, but she refused the proposal. She did not disclose the same to her mother. While the matter stood thus, on 22.10.2016 taking advantage of the absence of her mother at the residence between 7.30 to 8.00 A.M., the petitioner trespassed into the house of the victim and caught hold of her tightly and requested to satisfy his lust. Thereupon she made an attempt to escape from him, suddenly the petitioner beat her indiscriminately and demanded her to satisfy his lust, otherwise threatened to kill and while she was apprehending danger, the petitioner raped her and thereafter she kept quiet without disclosing the incident to her mother, and later she suffered some ill health on account of such incident and she was taken to hospital, there the Doctor identified that she had forced to sexual intercourse.

The main contention of the petitioner is that no incident occurred, he was falsely implicated on account of filing writ petition for Habeas Corpus against the police and that apart there is abnormal delay in lodging the complaint, i.e., almost one and a half month, itself shows that the petitioner did not commit such offence. Finally, it is contended that the petitioner was juvenile as on the date of incident and produced his birth certificate issued by the Registrar of Births and Deaths, Tenali Municipality, dated 19.04.2011 in support of his contention. It is further contended that the petitioner can claim bail under Section 439 Cr.P.C., which is *pari materia* to section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2000 and when the petitioner is a juvenile, he cannot be arrested and remanded to the judicial custody and prayed to enlarge the petitioner on bail and that this court can enquire into, whether the petitioner is juvenile or not, while deciding bail application.

The Public Prosecutor for the State of Andhra Pradesh opposed the application on the ground that the petitioner was major by the date of incident, and produced S.S.C. certificate issued by the Board of Secondary Education, which shows that he was born on 06.05.1998.

As seen from the material available on record, there is of-course delay, but delay itself is not a ground to grant bail for the reason that the incident of rape involves family prestige, therefore, maintenance of silence without disclosing the incident for such a long period in view of the nature of the offence i.e. against young girl studying VIII class is not a ground to grant bail. The *de facto*

complainant belongs to Scheduled Caste and committing such offence against her attracts the offence punishable under Section 3(1)(w) (i) of SC & ST (POA) Act and Section 4 of the POCSO Act

The main endeavour of the counsel for the petitioner is that the petitioner is a juvenile by the date of alleged incident i.e. 22.10.2016. As per the date of birth certificate produced by the petitioner, dated 19.04.2011, R.Samrajyam, W/o.Ramisetti Srinivasa Rao, gave birth to a male child on 06.05.1999, thereby taking advantage of the certificate, the petitioner contended that he is a juvenile. No details, like name of the child and other particulars, whether the petitioner is a second or first child were mentioned in the certificate. In the absence of any details, it is difficult for me to accept that this certificate pertains to the petitioner.

On the other hand, S.S.C. certificate of the petitioner, disclosed that he was born on 06.05.1998, so by the date of alleged incident he was major completing 18 years of age. Thus, it appears, *prima facie*, that the petitioner was a major.

One of the contentions of the petitioner that question of juvenility can be raised at any time and drawn the attention of this court to Section 9 of the Juvenile Justice (Care and Protection of Children) Amendment Act, 2015, the language used in the Section is clear that at any stage the question of juvenility can be raised before the court. No doubt the inquiry is required to be conducted to find out whether the petitioner is a juvenile or not, but this court, while exercising power under Section 439 Cr.P.C. i.e. for grant of regular bail, cannot make such roving enquiry to find out

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whether the petitioner is a juvenile or not. In such case, the course open to the petitioner is only to file an application before the competent court to make such inquiry and on recording of any finding thereon, for any reason the court concludes that the petitioner is a juvenile, then he is entitled to raise such plea in a petition for grant of bail under Section 439 Cr.P.C.

Therefore, basing on such contention, it is highly difficult for me to enlarge the petitioner on bail at this stage as the petitioner allegedly committed a serious offence against the interest of the society i.e. Rape against the girl studying VIII class belonging to Scheduled Caste. Hence, I find no ground to conclude that the petitioner did commit no offence, *prima facie*, and the criminal petition is liable to be dismissed.

In the result, the criminal petition is dismissed.

M.SATYANARAYANA MURTHY,J

30.01.2017
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