

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.3171 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 by the petitioners/A.1 to enlarge him on bail in Crime No.124 of 2016 of Putlur Police Station, Ananthapuramu District, registered for the offences punishable under Sections 365, 376, 506, 306 of the Indian Penal Code, (for short 'I.P.C.') and Sections 5 and 6 of the Protection of Children From Sexual Offences Act, 2012 (for short 'POCSCO Act') and Section 3(2)(v) of the SCs/STs (POA) Act, 1989. He is in judicial custody since 29.12.2016.

It is the case of raping a minor girl aged 16 years by the petitioner with the aid of other accused. The mother of the victim girl – Lachigalla Naga Malleswari lodged a complaint with the police alleging that her daughter was aged 16 years, she was kidnapped by the petitioner with the aid of the other accused, taken to Balapuram hillocks, and the petitioner committed rape on her and later she was insulted abusing by her caste name as madiga and threatened her with dire consequences unless she did not cooperate for compromise without filing any complaint before the police, thereupon feeling ashamed, she committed suicide by pouring kerosene and set ablaze to her body, sustained burn injuries, which leads to death.

The main contention of the petitioner is that he had sexual intercourse with the minor girl for four months as per remand report prior to 23.12.2016 at Balapuramu Village, Putluru Mandal, Ananthapuram District, thereby it does not attract the offence

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punishable under Section 376 of I.P.C., though she belongs to scheduled caste enjoying sexual intercourse with her would not attract any of the provisions under the SCs/ STs (POA) Act and that the victim girl is not a child and thereby the consent can be inferred to conclude that it is only consensual sex, that the petitioner is languishing in jail since 29.12.2016 and prayed to enlarge the petitioner on bail.

The Public Prosecutor for the State of Andhra Pradesh opposed the petition on the ground that the deceased - Lachigalla Naga Malleswari was a child aged 16 years, she belongs to scheduled caste, but she was shifted forcibly in an auto belonging to A.2, taken her to hillocks and raped her not on one occasion, for a period of four months prior to the death of the deceased - Lachigalla Naga Malleswari by suicide and it is a serious offence punishable under the provisions of the POCSO Act and also under the provisions of the SCs/STs (POA) Act.

The complaint was lodged by the mother of the deceased, the deceased - Lachigalla Naga Malleswari was aged 16 years, and even if she participated in sexual intercourse by virtue of her age, the consent cannot be taken as free consent. Therefore, the alleged act of sexual intercourse would fall within the definition of 'rape' as defined under Section 375 of I.P.C., apart from that it would attract the offence under the provisions of the POCSO Act. Therefore, mere completion of investigation and enlargement of other accused, who aided the petitioner, are not the grounds to enlarge the petitioner on bail, since the petitioner committed serious offence against the minor girl aged 16 years, who belongs to scheduled caste and such offence seriously affects societal interest rather than protecting the individual right of liberty guaranteed under Article 21 of the Constitution of India. In such case

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it is difficult for me to strike balance between the societal interest and individual right of liberty guaranteed under the Constitution of India to grant bail. Therefore, I find no ground to enlarge the petitioner on bail. Consequently, the criminal petition is liable to be dismissed.

In the result, the criminal petition is dismissed.

M.SATYANARAYANA MURTHY, J

28.04.2017
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