

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.1419 OF 2017

ORDER:

This criminal petition, under Section 438 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'), is filed to grant pre-arrest bail to the petitioner/ A.1 apprehending his arrest in connection with Cr.No.192 of 2016 of P.Gannavaram Police Station, East Godavari District, registered for the offences punishable under Sections 417, 376, 506 read with 34 of Indian Penal Code, 1860 (for short 'I.P.C.') and Section 4 of Dowry Prohibition Act, 1961.

The case of the prosecution, in brief, is that the *de facto* complainant is a resident of Udumudi Village, P.Gannavaram Mandal. She lodged a complaint against the petitioner and others mainly on the ground that she developed acquaintance with the petitioner, while she was studying in the School, being a senior, and thereafter, a friend of the petitioner obtained her cell phone number and handed over the same to the petitioner, thereafter he started making phones expressing his love with her and promised, while expressing his intention, to marry her. Later, the petitioner secured a job in Indian Air Force. Whenever the petitioner returned to the Village, used to talk her by phone and on 29.04.2014 when the petitioner came to the Village on leave, took her to Jagannapeta Village and there a room was taken on rent in the lodge at Somisetty landmark, Jaggannapeta, and both of them, while in room against the will of the *de facto* complainant, he had sexual intercourse with her, and when she questioned about the incident, he informed that he will marry her as he is loving her, but

she informed that she came from poor family, then the petitioner said that he is a Socialist person and still wanted to marry the *de facto* complainant without insisting payment of any dowry and thereafter, whenever he came to Village on leave, he used to take her to lodge and enjoyed sex with her and promised to marry her, but when she demanded to marry, he refused on the ground that their parents asking huge amount as dowry and later the mediators approached the family members of the petitioner, they demanded Rs.10 lakhs as dowry to marry the *de facto* complainant, later threatened to kill them in case any report is lodged against the petitioners.

Learned counsel for the petitioner mainly contended that the material allegations made in the complaint are omnibus allegations without disclosing the specific date of offence and on the strength of such allegations, it is difficult to conclude *prima-facie* that the petitioner committed the offence, that apart he is a married person, working in Indian Air Force and in the event of his arrest, he will loose employment and therefore prayed to enlarge the petitioner on anticipatory bail.

The learned Public Prosecutor for the State of Andhra Pradesh contended that during investigation, the investigating agency examined the lodge owner as L.W.1 and recorded his statement under Section 161(3) Cr.P.C. which discloses that the petitioner and the defacto complainant obtained a room in the lodge at Jaggannapeta, Somisetty landmark. This piece of evidence is sufficient to conclude that the petitioner had sexual intercourse with the *de facto* complainant, but whether it is

against her will or not is a question of fact, which is to be decided only after trial.

As seen from the material on record, the petitioner had sexual intercourse with the *de facto* complainant promising to marry her, but it is against her will and later on the same promise, he enjoined sex with her whenever he returned to Village on leave from Delhi. Therefore, the petitioner made a false promise to marry her and induced her to participate in sexual intercourse on more than one occasion, and refused to marry her. On the other hand, the petitioner threatened the *de facto* complainant with dire consequences in case any complaint is lodged against him. Merely because he is employed in Indian Air Force, cannot be enlarged on pre-arrest bail and the employment is not a passport to any person to commit such offence taking advantage of his official position.

The allegations made in the complaint are specific that the first incident took place on 29.04.2014 and later whenever he returned to his Village on leave, he had sexual intercourse with the *de facto* complainant on the promise to marry her. But he did not keep up the promise and refused to marry the *de facto* complainant. On the other hand his parents also demanded Rs.10 lakhs to marry her. But having no other alternative, they lodged the complaint despite the threat of the men of the petitioner to kill the *de facto* complainant (victim) in the event of lodging any complaint against the petitioners.

For any reason, the petitioner was enlarged on pre-arrest bail, there is every possibility of interfering with further investigation and repeating the same threat or to influence any witness. This Court *prima-facie* concluded that there is

material against the petitioner to conclude that the petitioner committed an offence punishable under Section 376 I.P.C. subject to proof and there is every possibility of interference with further investigation in the event the petitioner is enlarged on bail. Hence, this Court cannot exercise discretionary jurisdiction conferred under Section 438 Cr.P.C. to grant pre-arrest bail.

Except contending that that the petitioner is working in Indian Air Force, no exceptional circumstances were brought to the notice of this Court enabling this court to grant pre-arrest bail. Merely the petitioner is working as an employee in Indian Air Force is not a ground to grant pre-arrest bail to the petitioner. Therefore, I find no ground to grant pre-arrest bail. Consequently, the criminal petition is liable to be dismissed.

In the result, the criminal petition is dismissed.

M. SATYANARAYANA MURTHY, J

22.02.2017
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