

**THE HON'BLE DR. JUSTICE SHAMEEM AKTHER**

**CRIMINAL PETITION No.10595 OF 2017**

**ORDER:**

This petition is filed under Section 438 Cr.P.C. to grant anticipatory bail to the petitioner-accused for the offences alleged under Sections 417, 376 and 506 IPC and 5(L) r/w 6 of POCSO Act, 2012.

2. Heard learned counsel for the petitioner, learned Additional Public Prosecutor representing the State and perused the record.

3. Learned counsel for the petitioner would submit that the petitioner is selected to the post of Police Constable and also he is getting ready for marriage. Then this case is foisted by the father of the victim. The petitioner did not have any physical relationship with the victim by name Gade Sandhya, aged 19 years. The story of the prosecution is absolutely false. The petitioner is innocent person. Number of villagers have given an affidavit stating that the petitioner has got very good conduct. He did not involve in any sexual acts with the victim. There is no application of any provisions of the POCSO Act. Further, there is no record to show that rape was committed by the petitioner on the victim and ultimately prayed to grant bail to the petitioner.

4. On the other hand, learned Additional Public Prosecutor would submit that when nobody was there at the house, the petitioner had forcible sexual intercourse with the victim, thereafter on many occasions in the last three years. She became pregnant. In 2016, the victim joined in vocational course. The petitioner had sexual relationship with the victim under the guise of marrying her and ultimately, refused to marry her. The allegations are grave. Therefore, it is not a fit case to allow the application.

5. The point for determination is whether the petitioner-accused is entitled for bail under Section 438 Cr.P.C.?

6. As per the report lodged by the father of the victim on 24.07.2017, the victim is 19 years old. The allegation is that the petitioner had sexual intercourse with the victim on some occasion in the last three years. She became pregnant. There is also statement of the mother of the victim to that effect. After the abortion, the victim joined in vocational course in the year 2016. There is also specific allegation of commission of sexual act by the petitioner on the victim against her will and free consent, and on the promise that he would marry her. At this juncture, it is not appropriate to disbelieve that the victim did not undergo abortion. Whether the ingredients of Section 376 IPC and any of the provisions of the POCSO Act are applicable to the case on hand, can only be decided after due trial. In view of grave allegations, the affidavit given by the villagers with regard to good conduct of the petitioner is not helpful to him to believe his innocence. It is specifically mentioned that the petitioner had sexual intercourse with the victim without her will. The matter requires investigation. In the circumstances, it is not a fit case to grant bail to the petitioner under Section 438 Cr.P.C.

7. Accordingly, the Criminal Petition is dismissed.

**DR.SHAMEEM AKTHER, J**

**DATED: 09-11-2017**

Hsd