

**HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH
FRIDAY, THE SEVENTEENTH DAY OF NOVEMBER, TWO THOUSAND AND
SEVENTEEN
: PRESENT :
THE HONOURABLE DR JUSTICE SHAMEEM AKTHER
CRLP .No. 10602 of 2017**

Between:-

Karim Morani, S/o. Gulam Ali Morani..

..... Petitioner/Accused

AND

The State of Telangana, Rep. by the Station House Officer,
Hayathnagar Police Station, Cyberabad, Through its Public Prosecutor,
High Court at Hyderabad.

.....Respondent/Complainant.

Petition filed under Sections 437 & 439 of Cr.P.C. praying that in the circumstances stated in the Grounds of Criminal Petition, the High Court may be pleased to enlarge the petitioner on bail in Crime No. 33 of 2017 of P.S. Hayathnagar, Cyberabad.

The petition coming on for hearing, upon perusing the memorandum of grounds filed in support thereof and upon hearing the arguments of Sri S. Niranjan Reddy, Senior Counsel for Sri N. Naveen Kumar, Advocate for the Petitioner and the Addl. Public Prosecutor(AP) for the Sole Respondent-State, the Court made the following

ORDER :-

“This Criminal Petition is filed by the petitioner-accused under Section 439 of Cr.P.C. to grant him bail in Crime No.33 of 2017 of Hayath Nagar Police Station, Cyberabad, registered for the offences punishable under Sections 417, 376, 342, 506 and 354(C) I.P.C.

2. Heard Sri . Niranjan Reddy, learned senior counsel representing Sri N.Naveen Kumar, learned counsel for the petitioner-accused, and Sri C. Pratap Reddy, learned Public Prosecutor appearing for the respondent-State, apart from perusing the material available on record.

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

One Kum. Swetha Parashar (hereinafter referred to as ‘de facto complainant’), a resident of New Delhi, wanted to make a career as an actress in the film industry. She was shifted to Mumbai in Mid-2014. She met Shirin Morani in Mumbai and they became friends. Shirin Morani was getting married in December, 2014. Shirin Morani requested the de facto complainant to stay at her house and help her in wedding preparations. At that time, the de facto complainant met the petitioner-accused, who is a leading film producer, and the petitioner took her mobile number and invited her to his birthday party on 22.03.2015. The petitioner produced a Hindi movie ‘Dilwale’ at that time. The petitioner called the de facto complainant to his house for having tea and she visited his flat. The petitioner was carrying a bottle of wine with him and told the de facto complainant that he was happy on that day as his film is coming up well and asked her to celebrate the same with a toast of wine. She was reluctant to take wine and after taking few sips, she felt dizzy. Then the petitioner forced himself upon her and she tried to resist. In the state of dizziness, she could not do much. After few hours, she regained her senses. By that time, the petitioner had already left and she felt a sharp pain in her abdomen and she realized that the petitioner had raped her by sedating her with a substance in the wine offered by him. When she called the petitioner, he stated that he had not done anything. She shouted on him and wanted to go to his house to tell his family members about the incident. Then the petitioner told her that he took her nude photos and if she informed the same to anyone, he would ruin her life and also told her that he has contacts with the underworld and he would get her eliminated. She did not report the incident to the police for the sake of her dignity and the dignity of her family, fearing that the petitioner would harm her. Thereafter, the petitioner started following her and calling her when she was alone in her flat and used to come late in the night and had sex forcibly against her wishes.

She was terrified and suffered in silence. Thereafter, on many occasions, the petitioner had called her and had sex with her on different occasions at Hyderabad. On 12.09.2015 during night hours, the petitioner told the *de facto* complainant that he will marry her. She went in depression and took treatment. She changed her phone numbers to avoid contacts with the petitioner. Even then, the petitioner harassed her. It is also alleged that on different occasions, the petitioner raped her for a period of about six months (July, 2015 – January, 2016) making false promises of marrying her and exploited her continuously. On a report dated 10.01.2017, this case is registered and under investigation.

4. Sri S. Niranjan Reddy, learned senior counsel appearing for the petitioner, would submit that the petitioner was granted anticipatory bail and thereafter, it was cancelled, so he was remanded in this case on 22.09.2017; the petitioner was on anticipatory bail for a period of ten months; there is no allegation against him that he interfered with the process of investigation and caused any hindrance in the investigation or influenced the prosecution witnesses; the anticipatory bail was cancelled only on the ground that he suppressed the material fact that he is an accused in another criminal case; the petitioner was granted bail in the said criminal case in C.C. No.1 of 2011 pending on the file of the Special Judge, CBI, Patiala House, New Delhi, on 28.11.2011; the entire investigation is completed; there are also exchange of whatsapp messages between the parties, wherein there is no mention of allegations of rape or any alleged confinement, promise of marriage, etc.; the petitioner is also suffering from health ailments, on that ground, the Special Judge, CBI, Patiala House, New Delhi, granted regular bail in the 2G Spectrum case, i.e., in the above C.C.; and ultimately, prayed to grant bail to the petitioner.

5. Sri C. Pratap Reddy, learned Public Prosecutor appearing for the respondent-State, would submit that all the material witnesses are examined; and the cell phone seized from the possession of the petitioner was sent to Forensic Science Laboratory for examination and the report is awaited.

6. The *de facto* complainant sought permission of the Court to be represented by a Lawyer and permission is accorded, *vide* the orders dated 14.11.2017 in CrI.P.M.P. No.12274 of 2017.

7. Sri Milind G.Gokhale, learned senior counsel for the *de facto* complainant, would submit that the medical record placed before this Court relates to the year 2011 and in the event of allowing the bail application, the petitioner would flight to foreign countries; therefore, it is not appropriate to allow the bail application.

8. In view of the contentions putforth by both sides, the point for determination is, whether the request of the petitioner-accused can be acceded to?

9. Learned counsel for the petitioner-accused has relied on the following decisions:

- (1) Sanjay Chandra v. Central Bureau of Investigation¹.
- (2) Satheesh Kumar @ Sathi v. State of Kerala².
- (3) Mr. Tejas Udaykumar Sarvaiya v. The State of Maharashtra and others³.

10. In Sanjay Chandra's case (1 supra), the Hon'ble Supreme Court observed that in bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail, the object of bail is neither punitive nor preventive, deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand

¹ (2012) 1 SCC 40

² 2016 SCC Online Ker 40018

³ Decided on 07.04.2016 in Anticipatory Bail Application No.105 of 2016 by the Bombay High Court

his trial when called upon, the Courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.

11. In Satheesh Kumar's case (2 supra), it is observed by the High Court of Kerala that the victim (24 years old nurse) was taken to the house of the accused on 24.06.2015 when his wife was away, and he subjected her to sexual intercourse after giving some sedative in coca cola, thereafter the victim was subjected to sexual intercourse on many occasions at hotels and at the residence of the accused. It is also observed that it is really doubtful whether this is in fact a case of rape, there is reason to believe that all instances were with her consent and whether the consent was in any manner vitiated on any occasions is a matter for decision on trial. The victim was not a common lady or uneducated lady who can be easily exploited.

12. In Tejas Udaykumar Sarvaiya's case (3 supra), it is observed by the High Court of Bombay, where the prosecutrix was 29 years old doctor, the incident of sexual intercourse took place in January, 2015, her consent was fraudulently obtained under the promise of marriage, the prosecutrix is a major and educated and unless special circumstances are made out, such ingredients of rape under Section 376 I.P.C. cannot be constituted and the accused was granted bail in the event of arrest.

13. The petitioner was granted bail under Section 438 Cr.P.C. by the learned IV Additional Metropolitan Sessions Judge at L.B.Nagar, Ranga Reddy District, vide orders dated 30.01.2017 in Crl.M.P. No.262 of 2017. The petitioner was on anticipatory bail for a period of about eight months. There is no allegation of the petitioner meddling with the prosecution, making an attempt to win over the witnesses or in any manner made an attempt to influence the witnesses. The anticipatory bail under Section 438 Cr.P.C. was cancelled only on the ground that the petitioner did not reveal his alleged involvement in C.C. No.1 of 2011 pending on the file of the Special Judge, CBI, Patiala House, New Delhi.

14. As per the submissions made by Sri C. Pratap Reddy, learned Public Prosecutor, all the material witnesses were examined. The cell phone recovered from the possession of the petitioner was sent to the F.S.L. and the report is awaited. There is record to show that the petitioner was granted regular bail in C.C. No.1 of 2011 pending on the file of the Special Judge, CBI, Patiala House, New Delhi, on 28.11.2011 on medical and other grounds. There is no record to show that the petitioner, in any manner, interfering with the process of investigation or trial of the above C.C. The passport of the petitioner was deposited in the above C.C. and after obtaining requisite permission from the Special Court, he travelled abroad and returned back to India. There is also record to show that the petitioner is suffering from serious health problems, i.e., (i) Ischemic Heart Disease with Ectasia of coronary arteries; (ii) Pituitary Adenoma including cyst in the brain; (iii) Neuro Cardiogenic Syncope; (iv) Arthritis of both knees, Lumbar Spondylitis, Cervical Spondylitis and Nasal Polyps with severely deviated septum; and he is on medical care from the year 2011 onwards. As per the record placed, the offences alleged to have been committed by the petitioner between July, 2015 and January, 2016. The report is lodged in this case on 10.01.2017. The *de facto* complainant is a major and an educated woman on the date of alleged offences. It is also alleged that on few occasions, the petitioner promised to marry the *de facto* complainant and subjected her to sexual intercourse. In view of the nature of allegations leveled against the petitioner and the circumstances of the case, it is early to conclude that the victim was subjected to sexual intercourse by the petitioner by administering a sedative and the petitioner made a promise to the victim to marry her. Whether the allegations leveled against the petitioner constitutes offences under Sections 417, 376, 342, 506 and 354(C) I.P.C. can only be decided on trial. Whether the consent of the victim was obtained by fraud can only be established after due trial. The genuineness of the allegations of rape alleged against the petitioner at this stage cannot be taken as true or otherwise. Further, when all the material witnesses are examined and only F.S.L. report relating to cell phone is awaited and when the petitioner

has deposited his passport in C.C. No.1 of 2011 pending on the file of the Special Judge, CBI, Patiala House, New Delhi, and visiting abroad with the due permission of the Court, it is difficult to hold that the petitioner would flight to foreign countries, in the event of grant of bail in this case. The apprehension of the victim is unsustainable. The relevance of whatsapp messages are required to be decided after due trial. At this stage, it is not a case to deny bail. Under these circumstances, the petitioner can be enlarged on bail.

15. In the result, the petitioner-accused is ordered to be released on bail, on his executing a personal bond for Rs.50,000/- (Rupees thousand only) with two sureties each for a like sum to the satisfaction of the VII Metropolitan Magistrate at Hayathnagar, Cyberabad, Rangareddy District. On release, the petitioner-accused shall not leave India without permission of the trial Court. The Criminal Petition is allowed accordingly. As a sequel, miscellaneous petitions, if any, pending in this Criminal Petition shall stand closed.”

Sd/- K. SHYLESI,
ASSISTANT REGISTRAR

//TRUE COPY//

for ASSISTANT REGISTRAR

To

- 1.The IV Additional Metropolitan Sessions Judge, at L.B. Nagar, Ranga Reddy District.
- 2.The VII Metropolitan Magistrate, Hayathnagar, Cyberabad, Ranga Reddy District.
- 3.The Station House Officer, Hayathnagar Police Station, Rachakonda, Ranga Reddy District.
- 4.The Superintendent, Central Prison, Cherlapally, Ranga Reddy District.
- 5.Two CCs to Public Prosecutor(TS), High Court of Judicature at Hyderabad (OUT)
- 6.One CC to Sri N. Naveen Kumar, Advocate(OPUC)
- 7.One spare copy.

TKK



HIGH COURT

DR.SA.J

DT.17-11-2017.

BAIL ORDER



CRL.P.No. 10602 of 2017

**RELEASE THE PETITIONER
ON BAIL**

**DRAFTED BY TKK
DT.17-11-2017.**

HIGH COURT

DR.SA.J

DT.17-11-2017.



BAIL ORDER

CRL.P.No. 10602 of 2017

**RELEASE THE PETITIONER
ON BAIL.**