

**HON'BLE SRI JUSTICE U.DURGA PRASAD RAO**

**CRIMINAL PETITION No.1385 of 2018**

**ORDER:**

In this petition filed under Section 438 of Cr.P.C, the petitioners/A1 to A4 seek anticipatory bail in FIR No. 17 of 2018 of Achampet Police Station, Nagarkurnool District, which is registered against them for the offences under Sections 376, 417 and 504 r/w 34 IPC.

2. The facts in brief, as per the complaint averments are to the affect that A1, who is a close relation of the de-facto complainant on the pretext of marrying her moved closely with the complainant and they loved each other. When the complainant was staying in hostel at Hyderabad, A1 used to visit her. On 24.12.2017 he brought her from hostel to their house at Achampet and promised before her parents that he would marry her and stayed in their house for two days and had sexual intercourse with her. Even thereafter, he went to Hyderabad and brought her to Telkapally Village where he was working and kept her in his room for about three days and had sexual intercourse with her. The further case of the complainant is that once, when the de-facto complainant asked him to marry her through the mobile discussion, he refused to marry on the

ground that he did not like her. On 12.1.2018, when she went to Atchampet, A4 who is the maternal uncle of A1, went to their house and abused the complainant and her parents and warned her to forget A1 otherwise they would meet serious consequences. When parents of the complainant questioned about the attitude of A1 before the elders, A1 curtly stated that he would not marry her. Further, the parents of A1 i.e., A2 and A3 abused the complainant in the presence of the elders and stated that they would not perform the marriage of their son with the de-facto complaint. Hence, the petition.

3. Seeking bail, learned counsel for petitioner would strenuously argue that all the material allegations are false and invented to implicate all the accused in a false case. Learned counsel would further submit that even assuming the complaint allegations are true, the offence under Section 376 IPC is not maintainable since even according to the own admission of the complainant, she moved closely with A1 and participated in sexual intercourse out of free volition and there was neither threat nor coercion. He further argued that the complaint was lodged belatedly on 3.2.2018 with all false averments. He, thus, prayed for bail to all the accused.

4. Learned Additional Public Prosecutor opposed the bail application stating that the investigation so far conducted by the police revealed strong prima facie case against all the accused. He further submitted that the legal aspect whether or not Section 376 has application in conjunction with Section 90 IPC, has to be decided only after trial but not at this stage. He, thus, prayed to dismiss the bail application.

5. A perusal of the FIR and the statements of witnesses would reveal a strong prima facie accusation against A1. The argument of learned counsel for petitioner that, Section 376 has no application is concerned, in *Uday v. State of Karnataka*<sup>1</sup>, the Apex Court has observed that there is no straitjacket formula for determining whether consent given by the prosecutrix to sexual intercourse is voluntary, or whether it is given under misconception of fact. In the ultimate analysis, the test laid down by the Courts provide at best guidance to the judicial mind while considering a question of consent, but the Court must, in each case, consider the evidence before it and the surrounding circumstances, before reaching a conclusion, because each case has its own peculiar facts which may have a bearing on the question whether the consent was voluntary, or was given under a misconception of fact. The Apex Court further observed that the Court must also weigh the evidence keeping in view the fact that

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<sup>1</sup> (2003) 4 SCC 46

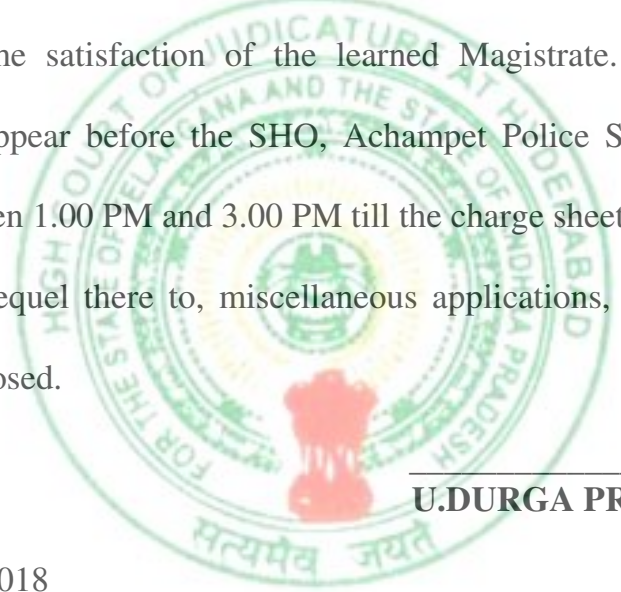
the burden is on the prosecution to prove each and every ingredient of the offence, absence of consent being one of them. Thus, whether Section 90 IPC can be invoked or not while discussing the Section 376 IPC, has to be decided in conjunction with all other facts, only after evidence is taken place in the case and not at this stage. Therefore, the argument of learned counsel for petitioners that even if the prosecution case is believed, the offence under Section 376 IPC is not maintainable cannot be countenanced at this stage.

6. As already noted, there is a strong prima facie accusation against A1 and the offences being grave, this Court is not inclined to grant him bail. Accordingly, this Criminal Petition is dismissed so far as petitioner/A1 is concerned.

7. The other petitioners/A2 to A4 are concerned, admittedly they have no role to play in the accusation relating to Section 376 IPC. The only allegation against them is that during panchayat before elders, they abused the complainant and her parents and curtly uttered that they would not perform the marriage of the complainant with accused No. 1. Having regard to the nature of the compliant allegations, this Court is of the view that bail can be granted to them.

8. In the result, the Criminal Petition is dismissed so far as petitioner/A1 is concerned and allowed so far as petitioners/A2 to A4 are concerned. Petitioners/A2 to A4 are directed to surrender before the Judicial Magistrate of First Class, Achampet, on or before 19.3.2018 and on such surrender, they shall be enlarged on bail on each of them executing a personal bond for Rs.20,000/- with two sureties each for likesum to the satisfaction of the learned Magistrate. They are also directed to appear before the SHO, Achampet Police Station on every Friday between 1.00 PM and 3.00 PM till the charge sheet is filed.

9. As a sequel there to, miscellaneous applications, pending if any, shall stand closed.



**U.DURGA PRASAD RAO, J**

Date: 12.03.2018  
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