

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No. 3713 OF 2018

ORDER:

This petition under Sections 437 and 439 of the Code of Criminal Procedure is filed to enlarge the petitioner-accused on bail in Crime No. 157 of 2018 of Narsingi Police Station, Cyberabad, registered for the offences punishable under Section 376 (2) (i) of IPC and Sections 5 (m) and 6 of POCSO Act, 2012.

2. Heard learned counsel for the petitioner and learned Public Prosecutor (T.S.).

3. The case of the prosecution in brief is that on 14-02-2018 while the victim girl by name Sruthi, aged 4 years-daughter of the *de facto* complainant was playing along with other children in front of her house, the petitioner came to her, took her to his shed by offering a cake, removed her underwear and fingered with his hand at her private parts and that four days thereafter, the victim girl complained pain.

4. Learned counsel for the petitioner submits that there is delay in lodging report with police and complaining pain four days after the incident is highly doubtful and that the petitioner has been languishing in jail since 26-02-2018.

5. Learned Public Prosecutor opposed the petition on the ground that investigation in this case is not completed yet and if the petitioner is enlarged on bail, there is every possibility of his interfering with further investigation.

6. The act allegedly committed by the petitioner is a heinous act of committing rape of a child of 4 years age while she was

playing in front of her house along with other children. The victim girl is aged 4 years and it is difficult for her to distinguish what is right and what is wrong and she cannot even express what had happened to her whether it is rape or otherwise at the age of 4 years. Therefore, the delay in lodging report pleaded by learned counsel for the petitioner is not a ground since the matter involves family prestige of the victim girl. The contention of learned counsel for the petitioner that complaining pain by the victim girl four days after the incident is highly doubtful cannot be appreciated since the victim girl is aged 4 years and she does not have the power of discretion and cannot distinguish what is good and what is bad. The submission of learned counsel for the petitioner that the petitioner has been languishing in jail since 26-02-2018 is no more a ground since languishing in jail or long period of incarceration in jail is not a ground to enlarge the petitioner on bail in view of the law declared by the Apex Court in *Channa Boyanna Krishna Yadav Vs. State of Maharashtra*¹, wherein the Apex Court held that while deciding an application for grant of bail, the gravity of the alleged offence has to be taken into consideration and mere period of incarceration or the fact that the trial is not likely to be completed in the near future either by itself or conjointly may not entitle the accused to be enlarged on bail. By applying the above principle, long period of languishing in jail is not a ground when the petitioner allegedly committed a serious offence against the victim girl of four years age.

¹ 2007 (1) SCC 242

7. Having considered the facts and circumstances of the case and the stage of investigation, I am not inclined to enlarge the petitioner on bail at this stage.

8. The criminal petition is accordingly dismissed. Pending miscellaneous petitions, if any, shall stand dismissed in consequence.

M. SATYANARAYANA MURTHY, J.

Date: 10-04-2018.
JSK

