

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.4321 OF 2018

ORDER:

The petitioner, who is A.1 in Crime No.34 of 2018 of Gollapalli Police Station registered for the offence punishable under Section 376(1), 417, 420 and 290 of the Indian Penal Code, 1860 (for short, I.P.C.), apprehending his arrest filed this criminal petition under Section 438 of the Code of Criminal procedure, 1973 (for short 'Cr.P.C'), to issue a direction to the Station House Officer, Gollapalli Police Station to release him on bail in the event of arrest.

The case of the prosecution in brief is that on 09.03.2018 the defacto complainant lodged a complaint against the petitioner and other accused alleging that the petitioner followed her for the last 5 years with a promise to marry her and on such pretext he had sexual intercourse with her, thereafter he refused to marry her despite her request and request of elders at panchayat, thus the petitioner allegedly committed the offence punishable under Sections referred above.

The main contention of the counsel for the petitioner is that when the petitioner had sexual intercourse with a woman, who is major, promising to marry her, it would not constitute an offence, *prima facie*, punishable under Section 376(1) I.P.C., unless the prosecution established that such representation was made with dishonest intention at the time of inception and in the absence of such allegation the petitioner is not, *prima facie*, guilty of any offence, and prayed to enlarge the petitioner on bail.

The Public Prosecutor for the State (TS) opposed the petition on the ground that only four witnesses were examined and prayed for dismissal of the petition.

A bare look at the allegations in the complaint which set the criminal law into motion, the *de facto* complainant and the petitioners are residents of same Village, the petitioner followed her for five years on the pretext of loving her, expressing his intention to marry her, had sexual intercourse forcibly against her will and thereafter refused to marry her.

Grant of pre-arrest bail is not a matter of course and it is a matter of exception. Unless the petitioner shows that there are exceptional circumstances to conclude that he did commit no offence, the Court can exercise discretionary power under Section 438 Cr.P.C. In the present case except pleading ignorance no exceptional circumstances are brought to the notice of this Court.

In **Siddharam Satlingappa Mhetre vs State Of Maharashtra And Ors**¹ the Apex Court laid down the following guidelines to exercise power while granting bail under Section 438 CrPC.

“(a) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;

(b) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;

(c) The possibility of the applicant to flee from justice;

¹ (2011) 1 SCC 694

- 3 -

(d) The possibility of the accused's likelihood to repeat similar or other offences;

(e) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;

(f) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;

(g) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which the accused is implicated with the help of [Sections 34](#) and [149](#) of the Penal Code, 1860 the court should consider with even greater care and caution, because over implication in the cases is a matter of common knowledge and concern;

(h) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to free, fair and full investigation, and there should be prevention of harassment, humiliation and unjustified detention of the accused;

(i) The Court should consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

(j) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused in entitled to an order of bail.”

According to guideline (a) and (j) of the judgment referred above, the Court has to take into consideration the gravity and seriousness of the offence, so also the impact on the Society, and the Court is required to strike balance between the individual right

- 4 -

and liberty guaranteed under the Constitution of India and the societal interest. But in the present case, taking into consideration of the gravity of the offence, I am not inclined to exercise power under Section 438 Cr.P.C. to direct the Station House Officer to release the petitioner on bail.

In the result, the criminal petition is dismissed.

M. SATYANARAYANA MURTHY, J

Date: 26.04.2018
BV

