

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRL.P.No.4346 OF 2018

ORDER:

This criminal petition is filed under Section 438 Cr.P.C to grant pre-arrest bail to the petitioner/Accused in Crime No.33 of 2018 of Choppadandi Police Station, Karimnagar District, registered for the offences punishable under Sections 420, 417 and 376(2)(n) IPC.

The case of the prosecution in brief is that one Dasari Anusha, daughter of the *de facto* complainant developed acquaintance with the petitioner through her friend and thereafter, he used to sent SMSs and other messages, expressed his intention to marry her as he fell in love with her and taking advantage of the situation, he made several attempts to satisfy his lust and in the month of October, 2017 at about 02.00 PM he took her to a secrete place near Shambhuni Temple behind the bushes while saying that he will marry and had sexual intercourse against her consent or without her consent. Thereafter, on coming to know the same by the parents of the victim girl referred the matter to the elders, but he refused to marry her. Thereafter, reported to the police. On the strength of the complaint, the police registered the above crime.

The main contention of the petitioner is that there is a long delay in lodging report since the offence allegedly took place in the month of October, 2017, but the report was lodged with the police on 06.03.2018 and the petitioner is working in Indian Army and prayed to enlarge the petitioner on pre-arrest bail.

Undoubtedly, there is delay of six months in lodging the report with the police. But in the offence punishable under Section 376 IPC, the delay can be ignored since there is possibility of delay in lodging report due to involvement of family prestige and reference of disputes to the elders. Here also, the dispute was referred to the elders and requested the petitioner to marry her, but he refused and that too the family prestige is involved in the crime, if the delay is explained during trial, the same is not fatal to the prosecution case. Therefore, on the ground of delay in lodging report, the petitioner cannot be enlarged on pre-arrest bail.

The other contention of the petitioner is that he did commit any offence muchless had sexual intercourse with the victim girl without her consent. But this cannot be accepted at this stage in view of the presumption under Section 114-A of the Indian Evidence Act. In a prosecution for rape Clauses (a) to (n) of Sub-section (2) of Section 376 IPC, where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and such woman states in her evidence before the court that she did not consent, the court shall presume that she did not consent. The explanation thereto explained sexual intercourse, it shall mean any of the acts mentioned in clauses (a) and (b) to Section 376 IPC, presumption under Section 114 of Indian Evidence Act cannot be drawn, based on allegations made in the complaint that she did not give consent for sexual intercourse to the petitioner. During investigation, the investigating agency recorded the statements of the *de facto* complainant and the victim girl and they categorically stated that

the petitioner had sexual intercourse with the victim girl against her consent on the promise to marry her, but he did not marry her.

Merely because, the petitioner is an armed service person, he does not serve any sympathy, as armed person is required to maintain high degree of discipline, but instead of maintaining such high degree of discipline, indulged in such sexual offence and that too the investigation is not yet completed and FSL report is also not received by the investigating agency.

In **Siddharam Satlingappa Mhetre vs State Of Maharashtra**

And Ors¹, the Apex Court laid down the following guidelines for exercising jurisdiction for granting pre-arrest bail.

- i) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;
- ii) The antecedents of the applicant including the facts as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;
- iii) The possibility of the applicant to flee from justice;
- iv) The possibility of the accused's likelihood to repeat similar or the other offences;
- v) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;
- vi) Impact of grant of anticipatory bail particularly in case of large magnitude affecting a very large number of people;
- vii) 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 case in which accused is implicated with the help of Section 34 and 149 of IPC, the Court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;
- viii) While considering the prayer for grant of anticipatory

¹ (2011) 1 SCC 694

bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;

- ix) The Court to consider reasonable apprehension of tampering of the witnesses or apprehension of threat to the complainant;
- x) 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 is entitled to an order of bail.

By applying the above guidelines, seriousness and gravity of the offence allegedly committed by the petitioner, its impact on the society and the individual, it is not a fit case to grant pre-arrest bail to the petitioner.

In the result, the criminal petition is dismissed.

Pending miscellaneous petitions in the petition, if any, shall stand closed.

M.SATYANARAYANA MURTHY,J

19.04.2018
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