

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRL.P.No.4760 OF 2018

ORDER:

This criminal petition is filed under Section 438 Cr.P.C to grant pre-arrest bail to the petitioners/A2 to A4 in Crime No.191 of 2016 of Siddipet II Town Police Station, Siddipet District, registered for the offences punishable under Section 376 IPC and Section 5 read with 6 of POCSO Act.

The *de facto* complainant is the mother-in-law of A1 and the petitioners are family members of A1. A1 is husband of the elder daughter of the *de facto* complainant and when he was driving tractor, the tractor tyre got punctured and while attending the puncture of tractor tyre at the open place opposite of Siricilla Kaman, he went to the house of in-laws and asked the victim girl to bring drinking water, on asking, her daughter took water and after drinking water, her son-in-law took the victim girl to his room on his motor cycle to wash the dishes. When the victim girl went into the room, the petitioners bolted the doors from outside accommodating A1 to rape the victim girl, who is no other than the sister of his wife. Therefore, the petitioners abetted A1 to commit the above offences. On the basis of the report of the *de facto* complainant, the above crime was registered and issued FIR.

The main contention of the petitioners is that the petitioners were nothing to do with the above offences and the role played by the petitioners is only bolting the doors from outside the house and that would not constitute offence. They also contended that A1 was already arrested. Therefore, the petitioners prayed to enlarge them on pre-arrest bail.

As seen from the allegations made in the complaint, the victim girl is aged 16 years on the date of incident and that the accused are of close relatives of the victim girl, who happened to be husband of the elder sister. She went along with A1 to his house and the petitioners, who are family members accommodated A1 to rape the victim girl by bolting the doors from outside the house. This act would constitute abetment as defined under Clause 3 of Section 107 IPC and thereby, the petitioners are equally responsible for the rape committed on the victim girl by A1 and the contention that the petitioners did commit no offence either under Section 376 or under Sections 5 read with 6 of POCSO Act cannot be accepted. Since the offence is a matter of serious concern and the victim girl is only a child as defined under Section 2 of the POCSO Act.

The Apex Court in **Siddharam Satlingappa Mhetre Vs. State of Maharashtra and others**¹, laid down 10 guidelines to exercise jurisdiction under Section 438 Cr.P.C. They are as follows:

The following factors and parameters can be taken into consideration while dealing with the anticipatory 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 accuser'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*

¹ 2011 CrL.L.J. 3905

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 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.*

According to the guidelines, to exercise power under Section 438 Cr.P.C. the Court has to strike the balance between the fundamental rights of liberty guaranteed under the constitution, so also to the societal interest. The offence of rape on a child aged less than 18 years will have its own impact on the society and keeping in mind the societal interest, I am of the considered view, it is not a fit case to enlarge the petitioners on pre-arrest bail and consequently, the petition is liable to be dismissed.

In the result, the criminal petition is dismissed.

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

M.SATYANARAYANA MURTHY,J

02.05.2018
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