

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.5665 OF 2018

ORDER:

The petitioner is A1 in Crime No.57 of 2018 on the file of E.Bayyaram Police Station, Pinapaka Mandal, Badradri, Kothagudem District. The crime registered is for the offences punishable under Section 376 r/w 511 IPC and Sections 8 & 17 of the Protection of Children from Sexual Offences Act, 2012 (for short, 'the POCSO Act') and also Sections 3(1)(iii) & 3(2)(v) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 (for short, 'the Act').

2. The FIR registered on 21.05.2018 at 18.30 hours from the information received at that time for the alleged occurrence stated happened about seven or eight days earlier. Section 3(1)(iii) of the Act speaks about forcible removal of clothes from the person of a member of a Scheduled Caste or a Scheduled Tribe or parades him naked or with painted face or body or commits any similar act which is derogatory to human dignity. Section 2(d) of the POCSO Act defines the "child" means any person below the age of eighteen years. Section 7 of the POCSO Act reads as under:

7. Sexual Assault: Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault.

Section 8 of the POCSO Act reads as under:

8. Punishment for sexual assault: Whoever, commits sexual assault, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to five years, and shall also be liable to fine.

3. A very report of the *de facto* complainant with seven or eight days delay shows from the handwritten report her age mentioned as eighteen re-written eight making seven appears to suit the definition of Section 2 of the POCSO Act and there is no initial or correction at that even crucial. From the investigation showing examination of nine witnesses already, no where show any collection of the age proof from such mentioning initially of eighteen and correcting as seventeen years of the alleged victim, that goes to the very root of the case as to the application of POCSO Act or not. So far as the alleged occurrence mainly saying A2-Pittala Ramana taken the victim girl to the bank at Manuguru, as assistance for her bank work, and after completion of the bank work taken her to movie 'BARTH ANE NENU' and after completion of the movie

and after purchase of fruits and vegetables, while they were coming in the way, the petitioner-A1 was called by A2-Pittala Ramana saying as it is the sunset difficult for them to go and he can drop and in the way while proceeding, A2 allegedly stated the victim girl to sit in the middle of the bike for she was sitting next to her as both pillion riders of the two wheeler. It is by saying after Janampet village and on the way to Bhupathi Rao Peta (ST) colony A1 is driving two wheeler into the Eucalyptus plantation through the cattle road for about 200 metres and they got down and A1 put his hands on her shoulder and kissed her and removed her chunni and when he caught hold of her, she wriggled out to prevent the sexual intercourse on her. The F.I.R. further reads it is a plan of the petitioner-A1 and that A2-Pittala Ramana to commit the alleged act and she ran into the fields inside. They searched through the cell torch light and later she went to her house.

4. Importantly, it is in saying that on the next day A2 brought chunni to the house of victim and given to the mother of the alleged victim. It is further averred after that incident, A1 coming to the house of A2 and seeing seriously towards victim and she is fearing. As pointed out by the learned counsel for petitioner, there is some

probability also for the fact that from the investigation there is nothing to show including from any school record/birth record/voter identity card/Civil Supplies (Ration) card as to what is the age mentioned of the victim, and there is nothing even in the statement under Section 161 Cr.P.C. of the victim has the age of 18 years mentioned, corrected as 17 years, after receiving of the report or while giving of the report as the case may be; leave it as it is. So far as the application of Section 3(1)(iii) of the Act is concerned, it no way attracts from the very wording of removal of any cloth and there is nothing to show any of her inner garments or the like removed much less to say that there was any attempt to commit rape; leave it as it is. It is one of the contentions of the learned counsel for petitioner that it is highly unbelievable that A2 brought the chunni on the next day and handed over to the mother of victim at her house without questioning.

5. There is nothing as to why the victim kept quiet for seven or eight days is one of the important factors, for which there is no explanation from her; leave it as it is. There is nothing even to say on which date the alleged incident was happened at least date not given by simply mentioning more than seven or eight days back. At least

in the so-called investigation, the statement of any of the witnesses is not ascertained, though FIR need not be encyclopaedia. Further, what the mother of victim says the victim did not inform, but after sometime later in saying A1 coming to the house of A2 and seeing her seriously. From that, the report allegedly given for that also in between when he came and when he saw seriously and who were the inmates of the house, if any, that observed; leave it as it is. Even the mother of victim in her statement clearly says as A2 and the victim went for the bank work and to see the movie and they did not turn up even it was sunset and she was anxious and sometime later after the victim came to the house, being her daughter she questioned and the victim did not say anything including as to what happened to the chunny and why she was in anxious mood and she did not care for it, appears to be something artificial of one or other of the two versions to appear anxiously and without chunny or even if so when questioned, without eliciting left and did not care. These are the infirmities pointed out.

6. By taking into consideration the above, though it is a fit case to grant anticipatory bail once from the involvement of IPC offences, Section 3(2)(v) or 3(2)(va) of

the Act equally applies and therefrom the bar under Section 18 of the Act applies to grant anticipatory bail.

7. Having regard to the above, this Criminal Petition is disposed of with the following observations:

“Liberty is given to the petitioner to surrender before the learned Magistrate concerned and move a regular bail application with notice to the Public Prosecutor concerned for the learned Sessions Judge concerned by filing affidavit in proof of surrender, so that after hearing the Public Prosecutor and on considering the material, the Special Judge shall consider for grant of the bail with necessary conditions.”

Dr. B. SIVA SANKARA RAO, J

25.06.2018
MVA

