

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.5748 of 2018

ORDER:

The petitioner is the sole accused in Crime No.88 of 2018 on the file of Suryapet II Town Police Station, Suryapet District. The crime is registered on 13.04.2018 for the offences punishable under Sections 417, 376 & 506 IPC.

2. Heard the learned counsel for petitioner and the learned Public Prosecutor representing the State of Telangana and perused the F.I.R., bail application averments and other material on record including the order of another Bench of this Court in CrI.P.No.662 of 2017 dated 08.02.2017 granting regular bail to the accused therein-Pendam Venkatesh in Crime No.1114 of 2016 on the file of K.P.H.B. Colony Police Station, Cyberabad by referring to the expression of the Apex Court in **Kaini Rajan v. State of Kerala**¹ and **Akshay Manoj Jaisinghani v. State of Maharashtra**², wherein referred the decision of **Mahesh Balkrishna Dandane v. State of Maharashtra** in A.B.A.No.27 of 2014 dated 12.03.2014. Perused the material on record.

3. The very case of the *de facto* complainant in registration of the crime from her report shows that she is the resident of Suryapet town by the side of AVM School at Sandya Enclave and her parents are teachers and she got younger sister. In

¹ (2013) 9 SCC 113

² 2017 (1) R.C.R. (Criminal) 715

the year 2013, while the *de facto* complainant studying in Sri Venkateswara Engineering College, the accused-Marri Vinay Kumar, S/o. Venkanna, acquainted with her as he was also studying engineering in the same college and he is the resident of Balajinagar, Suryapet town and their acquaintance was gradually developed as love affair between them and from that he assured of marrying her and lured of saying he was loving her and going to marry and made her to believe and taken her to movies and shikars and frequently he was even telephoning to her cell phone numbers 7893182514 and 7794882881 from his three cell phone numbers 9550555123, 8519817998 and 9059359666 and even he was sending messages besides the phone calls and whenever her mother and father being teachers attended to duties, he was coming to her at the time no one there and they were physically enjoying the sexual life from his assurance of marrying her by believing that she is going to marry him and he got the job on compassionate grounds from death of his father as Police Constable while in service. It was while so, all of a sudden in December, 2017 he changed his tune and prepared to marry another girl and when she asked as to how he could do so having promised to marry and enjoyed sexually refusing to marry and going to marry another woman which she came to know, he threatened her saying he is not loving her and if she again forced to reach

him, he would kill her, and having enjoyed sexually with a promise to marry for the past five years and refusing to marry she was a victim in his hands and hence, to take action and her statement during investigation is also the self-same.

4. The learned Public Prosecutor opposed the bail application with reference to the above facts of there is no voluntary consent as contemplated by Section 39 IPC and the consent if at all is under misconception or without free consent at all, but for from the promise to marry and it is only because of his promising in luring her she allowed him to participate in sex; thereby, it is squarely comes within the meaning of 'rape' defined under Section 375 punishable under Section 376 IPC.

5. On the other hand, it is the submission of learned counsel for the petitioner referring to the expressions supra and on the facts that a reading of the very report shows it is a free sexual life voluntarily by the majors initially and the promise for marriage is subsequent outcome and once there is a voluntary participation of two majors, there is no offence at all that attracts and any breach of the contractual promise to marry subsequently as a civil remedy if at all is otherwise and not liable for any penal consequences, that the very prosecution case in registration of the crime is baseless and unsustainable and there is no likelihood of the accused being

convicted even the police file the final report and any charges framed and there is no necessity of putting him to ordeal of trial or keeping him in judicial custody by curtailing his personal liberty as part of right to life and thereby, he is entitled to the concession of anticipatory bail, that too being public servant from the likelihood of losing the job and hence, to grant a concession of anticipatory bail.

6. The very report of the *de facto* complainant referred with her statement during investigation clearly shows their acquaintance riped to love affair and he wanted to marry her and lured her and was telephoning to her or sending messages to her by giving phone numbers, further in the absence of her parents he was coming and enjoyed her sexually with that promise to marry. It is definitely even she consented not a voluntary consent contemplated by Section 39 IPC, but from the promise to marry in enjoying her and thus squarely comes under the definition of rape under Section 375 IPC as per the settled law.

7. Now, coming to Crl.P.No.662 of 2017 (**Pendam Venkatesh's** case) placed reliance refers to **Kaini Rajan's** case (supra 1) and **Akshay Manoj Jaisinghani's** case (supra 2), the observations therein read that in **Kaini Rajan's** case (supra 1) there is an observation of *prima facie* case for the offence of rape not made out and in **Akshay Manoj**

Jaisinghani's case (supra 2) it was held referring to **Mahesh Balkrishna Dandane's** case referred supra as under:

“This Court has already held in the case of **Mahesh Balkrishna Dandane v. State of Maharashtra, ABA No. 27 of 2014 decided on 12.3.2014**, that to satisfy the sexual urge is a free decision of every major individual irrespective of gender. Thus, promise to marry in any manner, cannot be a condition precedent to have sex. However, the behavioural pattern and psyche of Indian society has to be taken into account while dealing with this issue. Since many generations, virginity of a woman is considered precious and there is a moral taboo that it is a responsibility of a woman to be a virgin at the time of marriage. However, today, the young generation is exposed to different interactions with each other and is well informed about sexual activities; similarly, the late marriages and economic independence are also relevant factors. The society is trying to be liberated but carries baggage of different notions of morality wherein sex before marriage is a matter of censure and hence, it is a hush-hush subject. In fact, it is an issue before the social thinkers to educate and guide the society. Under such circumstances, a young woman who is in love with a boy forgets that to have sex is her option like her counterpart but somehow refuses to take the responsibility of her decision. If at all she has indulged into sexual activities even on a promise to marry, the girl may land up emotionally and physically in a pathetic situation after break up. To marry someone is a matter of choice. It cannot be imposed on anybody. Only because two individuals are sexually involved with each other, it is not compulsory for them to marry. Initially, a boy and a girl genuinely may want to marry and are true to their emotions and establish sexual relationship, however, after some time, they may find that they are not mentally or physically compatible and one decides to withdraw from the relationship. Under such circumstances, nobody can compel these two

persons to marry only because they had sexual relationship. It is necessary to have a healthy, objective and legal approach towards these incidents. There may be moral bonding between the two persons when they indulge into sexual activities with promise to marry and it is also a fact that ultimately women only can remain pregnant and therefore, she suffers more than the man. However, in law, this cannot be labelled in any manner as a rape.

It is by referring the same as paragraph No.5 of the order in Crl.P.No.662 of 2017 granted regular bail. In **Pendam Venkatesh**'s case with reference to those facts, what observed by another Bench of this Court was that having regard to the above and since all the material witnesses were already examined, the request of petitioner therein can be considered in allowing the regular bail.

8. Leave about the fact that the facts are entirely different and the case on hand is not even for regular bail, and the regular bail and anticipatory bail cannot be at par as per the settled law including from the expression of the Apex Court in **Siddharam Satlingappa Mhetre v. State of Maharashtra**³ referring to the Constitution Bench expression of the Apex Court in **Gurbaksh Singh Sibbia Etc vs State of Punjab**⁴, here, at the cost of repetition what the Apex Court observed in the above case is if two majors agreed and freely participated in the sexual intercourse, it is not

³ (2011) 1 SCC 694

⁴ (1980) 2 SCC 565

an offence of rape. Here, from the very F.I.R. contents and the statement of victim the accused lured her, promised to marry and enjoyed her sexually, but for that she could not have been consented; from which it is an offence of rape under Section 375 IPC for no free consent as contemplated by Section 39 IPC as also observed by this Court in **2015 (2) ALT Crl. 239. BPK v. State of Telangana** referring to several expressions of the Apex Court including **Deelip Singh Vs. State of Bihar⁵, State of H.P. Vs. Mango Ram⁶, Deepak Gulati Vs. State of Haryana⁷, Yedla Srinivasas Rao Vs. State of A.P.⁸, Pradeep Kumar Verma Vs. State of Bihar⁹ and State of UP Vs. Naushad¹⁰.**

9. Having regard to the above, the petitioner is not entitled to the concession of anticipatory bail and the fact that he is the public servant and likelihood of losing job if arrested cannot even be considered to outweigh over the sufferance of victim.

In the result, this Criminal Petition is dismissed. It is needless to say there is no *res judicata* for the bail

⁵ 2005 (1) ALD Cri 65 (SC)=2005 (1) SCC 88

⁶ 2000 (7) SCC 224

⁷ 2013 (3) ALT (Crl) 339 SC

⁸ 2007 (1) ALT (Crl) 61 (SC)

⁹ 2008 (2) ALT (Crl) 445 (SC)

¹⁰ 2014 (1) ALD Crl 634 (SC)

application. If at all in future any bail application is filed by the petitioner from any changed circumstances, the same may be considered on own merits.

Dr. B. SIVA SANKARA RAO, J

04.07.2018

MVA

