

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Criminal Petition No.7285 & 7286 OF 2018

COMMON ORDER:

The petitioner in CrI.P.No.7285 of 2018 is the husband of *de facto* complainant and the petitioners in CrI.P.No.7286 of 2018 are the parents-in-law and relative to the husband of *de facto* complainant in Crime No.373 of 2018 on the file of the Ghatkesar Police Station, Rachakonda District. Said crime is registered against them as A1 to A4 for the offences punishable under Section 498-A IPC and Sections 3 & 4 of the Dowry Prohibition Act based on the report of the *de facto* complainant-Gana Gana Nandini dated 16.03.2018 before referring by the police for possibility of reconciliation to the Legal Services Authority in Rangareddy District and having been failed, from receiving of the report the crime later registered on 18.06.2018. The petitioners are seeking anticipatory bail.

2. From the report of *de facto* complainant, the attribution against Smt. Girija-A4, relative of the husband of *de fact* complainant, as her husband A1 disclosing the bedroom issues to her, who is daughter-in-law of maternal aunt of A1, and she was abusing over phone or by visiting the house of her husband by putting unrelated questions and nothing beyond.

3. So far as the allegations against the in-laws shown along with the husband of *de facto* complainant are concerned, they were also ill-treating with a demand to meet additional dowry. So far as the

husband-A1 is concerned, her further allegation is that he suppressed the factum of his earlier marriage and marrying her and ill-treating her and further that four months prior to giving of the report when she was carrying, he forced her to undergo abortion by consuming Papaya fruit in saying he is not responsible for that pregnancy, but for out of her extra marital relation. From these facts, A1 went unsuccessful twice in seeking anticipatory bail including the latest dismissal order in Crl.M.P.No.2754 of 2018 dated 06.07.2018 passed by the learned XIV Additional Metropolitan Sessions Judge, Rangareddy District at L.B.Nagar, Hyderabad and from perusal of the same, as rightly pointed out by the learned Public Prosecutor in opposing the bail application of A1 mainly he is not entitled to the concession of bail, that too when the bail application is bereft of facts by also mentioning about the second marriage.

4. Having regard to the above and in the result, while dismissing the anticipatory bail application of A1 in Crl.P.No.7285 of 2018 anticipatory bail is granted to the other accused viz., A2 to A4 with the following conditions:

[1] A2 to A4 shall within fifteen (15) days from today submit before the S.H.O. concerned and execute a self-bond for Rs.50,000/- [Rupees fifty thousand only] each with two sureties for like sum each to the satisfaction of the arresting authority, otherwise giving liberty to the petitioner to submit within said 15 days from now before the Judicial Magistrate of First Class having the jurisdiction, for taking to custody and to enlarge as above. The bond to be obtained is not only to appear before the Court pending

investigation and after filing of final report in the form of charge sheet or the like for enquiry or pre-committal enquiry before said Court, but also thereafter on committal before the Court of Sessions or by virtue of any transfer of proceedings for want of jurisdiction or otherwise before any other Court and even after trial before such Court to appear before revisional or appellate Court or other superior Court - vide decision - **Pre-Legal Aid Committee, Jamshedpur vs State of Delhi 1982[2]APLJ 43(SC)**; so that at stage of committal or other proceedings obtaining of fresh bond from accused and even affidavits of sureties of bonds and solvency earlier produced are ratifying and in existence and enforceable, without even insisting **their** further presence, serves the purpose. Such recourse quickens the proceedings at such committal or other stages without loss of time and it also to some extent complies with the requirement of Section 437A Cr.P.C.

[2] A2 to A4 shall report before the Station House Officer, concerned on every Sunday till filing of the charge sheet and thereafter once in a month on 1st Sunday till completion of trial/enquiry between 10.00 and 11.00 AM for assurance of **their** availability and non-interference **in any manner** with the witnesses.

[3] A2 to A4 shall not enter the area where the victim and witnesses reside, until further orders being passed by the learned Magistrate relaxing the same empowering him by virtue of this order.

[4] A2 to A4 shall attend before the Court of law regularly in enquiry and trial without fail, if not **their** bail shall be cancelled forthwith, without any further order so that, the Magistrate can also issue NBW by cancelling the bail from the power under section 439 [2] Cr.P.C. delegated to the learned Magistrate by this order during pendency of proceedings before the Magistrate.

[5] A2 to A4 shall not leave the State pending enquiry/trial without prior permission of the Court of concerned Magistrate/trial Judge.

[6] A2 to A4 shall furnish **their** full address with property and Bank Account particulars and submit **their** passport if any, after enlargement of bail on the next hearing date before the Magistrate Court concerned (for collecting by police as part of their duty to investigate-also the means of accused and to furnish the same in the final report of investigation to enable the trial court in the event of considering the need of awarding compensation under section 357 Cr.P.C. So to award from such material and evidence, apart from securing presence and obtaining of bond with sureties under section 437A Cr.P.C. etc.), failing which it is open to the learned Magistrate concerned by virtue of the power conferred by this order to cancel the bail.

[7] In the event of the police making out a case for police custody for the purpose of interrogation, the petitioner shall be liable to be taken in police custody for facilitating the further investigation remained if any, with the permission of the Magistrate concerned who can grant such police custody within 15 days from today, not exceeding 12 hours in the presence of a male member, subject to necessary precautions and instructions as per the constitutional bench expression of the Apex Court in guideline No.iv in **Gurbaksh Singh Sibbia Vs. State of Punjab**¹.

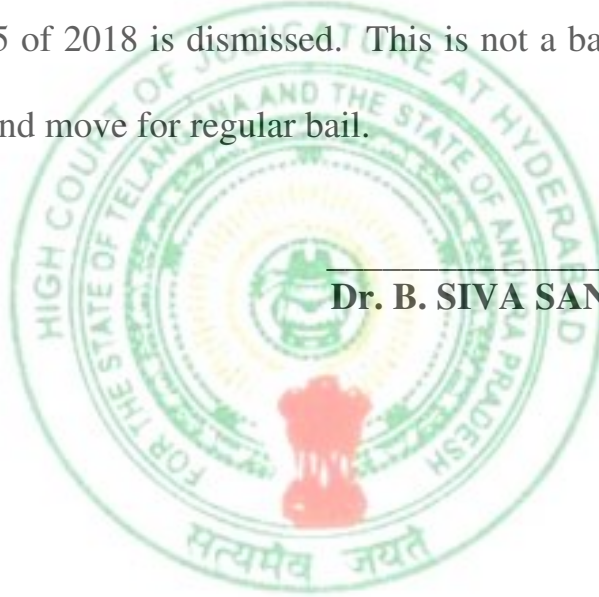
[8] The bail now granted is since a regular one till end of trial (without prejudice to the right to cancel meanwhile in case of need and/or for non-compliance of conditions supra) any absence of petitioner as accused for hearing/enquiry or trial, issuance of non bailable warrant-NBW (unless cancelled before execution) and even its execution and production of accused as per the NBW; that does not tantamount to cancellation of bail including from the

¹ (1980)2 SCC 565

wording of Sec.439(2) Cr.P.C. and as such in such event no fresh bail application can be entertained. As it tantamounts to only cancellation of bail bonds earlier executed, (leave about the power of the court to issue surety notices by forfeiting bonds and for imposing penalty on the bonds forfeited); the proper course is to direct the accused to work out the remedy to pay penalty on the previous forfeited bonds as per Section 441 to 446 Cr.P.C. and to submit fresh solvency with self bond for enlarging **them** by release from custody on payment of penalty of the earlier bonds forfeited without need of enforcing against earlier sureties again.

Accordingly, Crl.P.No.7286 of 2018 is allowed and Crl.P.No.7285 of 2018 is dismissed. This is not a bar for A1 if at all to surrender and move for regular bail.

02.08.2018
MVA



Dr. B. SIVA SANKARA RAO, J