

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.4818 OF 2017

ORDER:

This criminal petition is filed under Section 438 of the Code Of Criminal Procedure, 1973 to grant pre-arrest bail to the petitioner/A.3 apprehending her arrest in connection with Crime No.45 of 2017 of Bollarum Police Station, Hyderabad, registered for the offence punishable under Section 304-B of the Indian Penal Code, 1860 (for short 'IPC') and Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention Of Atrocities) Act, 1989 (for short 'the Act').

The case of the prosecution in brief is that 18.04.2017 at 8.00 p.m. the *de facto* complainant lodged a report with the police alleging that her sister Sandhya got married A.1 on 22.09.2015 at Ghaziabad, it was love marriage. The mother of the *de facto* complainant and the family members of A.1 did not attend the marriage. After marriage, the *de facto* complainant along with her sister Sandya (deceased) and A.1 went to Gorakhpur, native place of A.1, there A2 and the petitioner/A.3 met and behaved badly with them. The petitioner/ A.3 asked the *de facto* complainant and the Sandhya (deceased) about dowry saying that the said Sandhya has not given any dowry and gold at the time of marriage. Later her sister Sandhya (deceased) became ill and A.1 did not join her in the hospital, as they could not fulfill his demands of dowry, A.1 quarreled with Sandhya (deceased) and murdered and thereafter planned to show the death of her sister Sandhya to others like a suicide. On receipt of the complaint, the police registered the above

crime under Section 304-B of IPC. Later, on the memo, added Section 3(2)(v) of the Act and issued FIR.

The deceased Sandhya belongs to Scheduled Caste, whereas the petitioner and other accused are not the members of Scheduled Caste or Scheduled Tribe.

The main contention of the petitioner is that she is no way concerned with the death of Sandhya and the post mortem certificate also disclosed that the cause of death was due to hanging and that there is no allegation in the entire complaint or in the material collected during investigation that she abetted her to commit suicide and prayed to enlarge her on bail. It is also contended that she gave birth to a child about 3 months ago and in the event of her arrest, it is difficult for her to feed the child who is milk sucking baby and prayed to direct the station house officer, Bollaram police station, Hyderabad, to release on bail in the event of her arrest.

The *de facto* complainant was added as a party to the petition vide orders dated 16.08.2017 in CrI.M.P.No.5990 of 2017. Sri M.Roopender, learned counsel appearing for the *de facto* complainant contended that the death took place within the short period from the date of marriage and the allegations in the complaint are suffice to conclude that she was demanded for payment of dowry and gold etc., and thereby a presumption under Section 113-B of the Indian Evidence Act, 1872 shall be drawn and that to she was the member of Scheduled Caste and prayed to dismiss the petition in view of bar under Section 18 of the Act.

It is a strange case where the bail application was filed on 20.06.2017 almost 10 months ago and it is pending for the last 10

months. The petitioner was not arrested by the police, but the other accused A.2 was arrested and released on bail. The reason is not known as to why the arrest of the petitioner was not affected for the last 10 months.

Moreover, it is an undisputed fact that Sandhya was a member of Scheduled Caste and that her death was unnatural and it was within 7 years from the date of marriage. In such case the court can draw a presumption, in view of *prima facie* allegations made in the complaint that she was subjected to cruelty for her failure to meet the illegal demand for payment of dowry and that the cause of death for dowry harassment, under Section 113-B of the Indian evidence Act, 1872.

The main contention of the counsel for the petitioner is that the allegation made in the complaint would not attract the offence punishable under Section 3(2)(v) of the Act.

Section 3(2)(v) of the Act is an independent offence and according to the said provision, whoever, not being a member of a Scheduled Caste or a Scheduled Tribe, commits any offence under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more against a person or property on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with imprisonment for life and with fine.

Thus the alleged murder or driving the member of scheduled caste to commit suicide is an offence with imprisonment for a term more than 10 years and thereby the facts would attract the offence punishable under Section 3(2)(v) of the Act.

According to Section 18 of the Act, Section 438 of the Code shall not to apply in relation to any case involving the arrest of any person on an accusation of having committed an offence under this Act.

When the offence committed against the member of scheduled caste, which is under the provisions of IPC, is punishable with imprisonment for more than 10 years, it would directly attract the offence punishable under Section 3(2)(v) of the Act, *prima facie*. Therefore, it is difficult to exercise power under Section 438 CrPC in view of bar under Section 18 of the Act. However, in **Dr Subash Kashinath Mahajan v State of Maharastra and another** (Crl.A.No.416 of 2018, dated 20.03.2018) the Apex Court laid down certain guidelines whenever a crime is registered against the person other than the member of Scheduled Caste for commission of the offence under the provisions of the Act.

In such circumstances, this Court has no option except to direct the Station House Officer to follow the guidelines issued by the Apex Court in **Dr Subash Kashinath Mahajan** case while negating pre-arrest bail to the petitioner.

However, it is left open to the petitioner to surrender before the VI Additional Metropolitan Sessions Judge, Bollarum. On such surrender, if any application is filed under Section 437 and 439 CrPC, the learned Sessions Judge is directed to dispose of the petition on the same day, after service of notice on the public prosecutor, in accordance with law.

Accordingly, the criminal petition is disposed of.

M. SATYANARAYANA MURTHY, J

Date: 13.04.2018

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