

HON' BLE DR. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.8417 of 2018

ORDER:

This criminal petition is filed under Section 438 Cr.P.C. by the petitioner/ A1, seeking release in the event of his arrest in connection with Crime No.256 of 2018 on the file of Visakhapatnam III Town Police Station, registered for the offences punishable under Sections 498-A and 306 I.P.C.

2. Heard learned counsel for the petitioner and learned Public Prosecutor representing the State.

3. The petitioner is seeking anticipatory bail afresh having been unsuccessful before this Court in the earlier anticipatory bail application filed along with his parents in CrI.P.No.6440 of 2018 that was ended in dismissal insofar as the petitioner/ A1 concerned, while granting bail to A2 and A3, by order, dated 18.07.2018.

4. The contentions in the present anticipatory bail application are that a plain reading of the police report shows all the three accused are in no way connecting with the so called suicide of the deceased daughter of the de facto complainant and there was a voluntary friction in the family prior to 2017 itself and the deceased all of sudden left USA without even consent of her husband, the petitioner, having come down at her parents at Visakhapatnam in April, 2017 along with her younger son, after which the petitioner had

been repeatedly persuading her to come back to USA with the younger son to lead happy marital life. But due to the adamant attitude of her, they could not live together in USA. Since then, she stayed at her parents' house at Visakhapatnam and efforts became futile and he cause issued a legal notice on 14.10.2017. She used to pick up quarrels with her husband, the petitioner on trivial issues. On one occasion, the de facto complainant and her husband applied for visa to USA that was rejected and on that pretext, the deceased picked up a quarrel with the petitioner in USA. For the notice, dated 14.10.2017, the deceased sent a reply through advocate that shows the allegations leveled in the present police report not found place in that legal notice to attract the ingredients of Section 498-A and 306 IPC. It is further averred that the younger son of the deceased and the petitioner is suffering from Autistic Spectrum Disorder. The petitioner persuaded his deceased wife to take care of that boy. However, she forcibly got the child from USA to her paternal house, Visakhapatnam and she was interested in working at Hyderabad rather than staying at Visakhapatnam to take care of that boy and left the boy with her elder sister. The petitioner having given up his lucrative career in USA, permanently shifted to Visakhapatnam in May, 2018 and after that, on seeing the younger son's condition who is suffering from Autistic, he thought it fit to treat him immediately to get normal and

under these circumstances, with the consent of the deceased daughter itself, he had got his son with him and caused treated in Rainbow Hospital, Hyderabad and other hospitals in Visakhapatnam. The other contentions are unless anticipatory bail is granted and the child is taken care of including from the medical advise to take Christian Medical College, Vellore, the child position is in critical and thereby from the changed circumstances, he is entitled to be considered for grant of anticipatory bail.

5. The medical record filed with the present application is Visakha Children Hospital, O.P. treatments dated 21.07.2018, 29.07.2018, 31.07.2018 and 01.08.2017.

6. It is not even the case that he came down from USA prior to March, 2018 in the course of hearing arguments from the medical record he filed, it shows the child was treated at self same Visakha Children Hospital, on 01.08.2017. The case history runs in four pages, which clearly shows the child was admitted by the mother, who was the deceased and not by petitioner/ A1 or his parents. His contention for the purpose of the second bail application of she neglected and did not even care to treat the child is *per se* untrue from his own record.

7. The petitioner cannot take it as a ruse by showing the condition of the child that too child is suffering from Autistic from the birth, not a subsequent or recent development.

Undisputedly, the child was sent with the mother and not even an Indian Citizen, without his consent the question of taking child by mother from USA from his house could not be the consequence. The child was as per the FIR shown for some time with her in-laws house i.e., parents of the petitioner. It is not even their case that they treated the child by showing in any hospital at that time. Once such is the case and as observed by this Court in the earlier bail application while dismissing for the petitioner/ A1 at para-3 particularly contending in specific terms that the Court cannot pre-judge the issue and from the material there is *prima facie* accusation not only for the offences punishable under Sections 498-A and 306 IPC but also Section 363 IPC. Hence, the petitioner is not entitled to the concession of anticipatory bail.

8. Accordingly, the Criminal Petition is dismissed.

9. Consequently, miscellaneous petitions, if any shall stand closed.

JUSTICE Dr. B.SIVA SANKARA RAO

Date:31.08.2018
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