

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.9020 of 2018

ORDER :

The *de facto* complainant moved the criminal petition in seeking cancellation of the bail concession granted to the 2nd respondent/sole accused of Crime No.113 of 2018 on her report, for the offences under Sections 417, 420 and 376 IPC in CrI.M.P.No.1133 of 2018, dated 30.05.2018, by the learned Sessions Judge, Mahila Court, Visakhapatnam.

2. The observations in the bail order are that the accused moved the bail application in the crime of Arilova Police Station. It is the argument of the learned counsel for the accused that the victim is working as staff nurse in Care Hospital and aged 30 years and the accused belong to same village of the victim and they know each other for the last 15 years and they have bodily relationship for the last 14 to 15 years and the victim came forward with a version that there is a promise to marriage and she was sexually exploited by him and the said version cannot be believed, so requested for grant of bail and Additional Public Prosecutor opposed, but stated facts regarding acquaintance between the accused and the victim and the physical relationship not in dispute. The long standing physical relationship for more than a decade shows victim is a consenting party, it is difficult to believe that in all these years she was subjected to sexual intercourse believing the alleged promise to marry and if years pass

naturally every woman would suspect the bonafidies of very promise made a man to marry like in present case, thereby can be enlarged on bail on the condition of self bond for Rs.10,000/- with two sureties and appearance before Arilova Police Station on every Sunday and Wednesday between 5.00 p.m. and 7.00 p.m. for a period of one month or till filing of the charge sheet, whichever is earlier. The order was dated 30.05.2018.

3. In the present application for cancellation of the said bail what the *de facto* complainant/victim averred particularly at para 3 is that since the date of release on bail the accused is coming to the work place of the *de facto* complainant and threatening and harassing her with dire consequences and insisting to withdraw the complaint on 19.07.2018 and the accused came to the work place of the *de facto* complainant and assaulted in the hospital by insisting to withdraw the complaint, she out of fear not able to attend her duties and he is misusing the concession of bail granted supra and if he is allowed to continue on the concession, there is a life threat to her, thereby sought for cancellation.

4. It is based on subsequent event after grant of bail from the conduct of the accused. The contents of the report for cancellation sought under Section 439 (2) Cr.P.C. . No doubt, learned counsel for the petitioner/victim filed report given to the police dated 02.08.2018, which is 20 days prior to the filing of the application for cancellation

and the same was acknowledged by the Station House officer Arilova Police Station and the contents of the report shows after released on bail the accused came to her armed with knife with a threat to withdraw the case else to do away including by pouring acid on her face otherwise and from the hospital when she was going to Arilova towards her house, he obstructed her and threatened by showing knife to kill her and go for jail. It is further averred that she was beaten with the butt (reverse side of the knife) and she raised cries and people gathered and he fled away by threatening to do away her, she went to the P.S. Arilova., they stated that as already a crime is registered and no fresh crime is necessary, hence to take action. The copies marked to the M.E.O., Makkuva Mandal and D.E.O., Vizianagaram District, while addressing to the S.H.O., Arilova Police Station. As referred supra there is acknowledgment of the S.H.O., Arilova P.S., dated 25.08.2018, which is subsequent to the filing of the application for cancellation of bail. No doubt, in para 3 of the cancellation of the bail application she mentioned about the alleged occurrence covered by the said report dated 02.08.2018, however, did not mention about giving of the said report or refusal by police to receive or sending about the same by registered post, which is no doubt not fatal.

5. The contention of the learned counsel for the accused/respondent No.2 that it is hardly believable of he is resident of Venkata Bhiripuram Village of Makkuva Mandal, Vizianagaram District, about distance of 100 kms. to the alleged place of occurrence,

for the reason the bail conditions itself speaks reporting before the police weekly twice at Arilova Police Station. No doubt, there is no date and time subsequently mentioned by her of the alleged occurrence in her report sent by registered police, prima facie to correlate with the date of his attending the police station pursuant to the bail order conditions.

6. Having regard to the above, this Court feels it just rather than cancellation of bail to direct the police pursuant to the above report, which shows a cognizable offence, to register a crime and investigate and file final report and provide necessary protection to the petitioner/*de facto* complainant/victim.

7. With the above direction, the criminal petition is disposed of with a specific direction to the accused not to interfere either directly or indirectly with the personal liberty of the *de facto* complainant or other witnesses. Further, liberty is given to the *de facto* complainant, after police investigation in the report covered regarding threats from any progress, if at all, to move fresh application for cancellation with foundation.

Miscellaneous petitions pending, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

3rd October 2018.

mar