

HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

CRIMINAL PETITION No.9348 of 2021

O R D E R:

This Criminal Petition under Sections 437 and 439 Cr.P.C. is filed by petitioner – Accused in Crime No.679 of 2021 on the file of PS Chandanagar, Ranga Reddy District, registered for the offences punishable under Sections 354-D and 509 of the Indian Penal Code, 1860 (for short “IPC”) and Section 11 r/w 12 of Protection of Children from Sexual Offences Act, 2012 (for short “POCSO Act”), seeking bail.

2. A report was lodged by the victim girl on 10.09.2021 stating that she is residing in her father-in-law's house from the last two months and attending first year intermediate online classes and she got acquaintance with petitioner, as both of them belong to Garidepally village. It is stated that both of them used to talk over phone and also chatting with each other. Thereafter when she refused to talk with petitioner, he threatened her that he would upload photographs and chatting details in social media and Whatsapp in college groups and forced to talk to him over phone, due to which she is mentally disturbed. Basing on the said report, the present crime was registered.

3. Heard Sri K.Durga Prasad, learned counsel for petitioner and learned Assistant Public Prosecutor for respondent-State.

4. Learned counsel for the petitioner submits that initially complaint was registered under Section 354-D and 509 of IPC and subsequently, provisions of POCSO Act were added. He submits that even as per the complaint, the petitioner and victim girl knows each other and they belongs to same village and the petitioner is 20 years,

whereas victim girl's age is 16 years. He submits that even if all the allegations in the complaint are taken on its face value, they do not attract the provisions of POCSO Act. He submits that petitioner was arrested on 01.10.2021 and from the last 90 days, he is languishing in jail and so far police failed to complete the investigation and file charge sheet, as such his case may be considered for grant of bail.

5. Learned Assistant Public Prosecutor submits that already 161 Cr.P.C., statement of victim girl was recorded. However, he does not dispute the fact that charge sheet is not filed.

6. Section 167 (2) of Cr.P.C., reads thus:

“(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorize the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction:

Provided that-

(a) the Magistrate may authorize the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days; if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorize the detention of the accused person in custody under this paragraph for a total period exceeding,-

(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;

(ii) sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub- section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;]

(b) no Magistrate shall authorize detention in any custody under this section unless the accused is produced before him;

(c) no Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorize detention in the custody of the police.¹ Explanation I.- For the avoidance of doubts, it is hereby declared that, notwithstanding the expiry of the period specified in paragraph (a), the accused shall be detained in custody so long as he does not furnish bail;].²

Explanation II.- If any question arises whether an accused person was produced before the Magistrate as required under paragraph (b), the production of the accused person may be proved by his signature on the order authorizing detention.”

7. The Hon’ble Apex Court in the case of **Uday Mohanlal Acharya v.State of Maharashtra**¹ has observed that personal liberty is one of cherished objects of the Indian Constitution and deprivation of the same can only be in accordance with law and in conformity with the provisions thereof, as stipulated under Article 21 of the Constitution. When the law provides that the Magistrate could authorize the detention of the accused in custody up to a maximum period as indicated in the proviso to sub Section (2) of Section 167 of Cr.P.C, any further detention beyond the period without filing of a challan by the investigating agency would be a subterfuge and would not be in accordance with law and inconformity with the provisions of the Criminal Procedure Code, and as such, it could be violative of Article 21 of the Constitution of India and the Hon’ble Apex Court in recent judgment in **S.Kasi v. State**² wherein it was observed that the indefeasible right to default bail under Section 167 (2) Cr.P.C. is an integral part of the right to personal liberty under Article 21 of the Constitution, and the said right to bail cannot be suspended even during a pandemic situation as is prevailing currently. It was emphasized that the right of the accused to be set at liberty takes

¹ (2001)5 SCC 453

² 2020 SCC OnLine SC 529

precedence over the right of the State to carry on the investigation and submit a charge sheet. Additionally, it is well settled that in case of any ambiguity in the construction of a penal statute, the Courts must favour the interpretation which leans towards protecting the rights of the accused, given the ubiquitous power disparity between the individual accused and the State machinery. This is applicable not only in the case of substantive penal statutes but also in the case of procedure providing for the curtailment of the liberty of the accused.

8. In view of the foregoing reasons, as the charge sheet is not filed within the statutory period as contemplated under Section 167 (2) of Cr.P.C., the petitioner is entitled for statutory bail, which is an indefeasible right of the accused as laid down by the Hon'ble Apex Court in catena of cases.

9. Accordingly, this Criminal Petition is allowed. Petitioner / Accused shall be enlarged on bail on his executing a personal bond for a sum of Rs.20,000/- (Rupees twenty thousand only) with two sureties for a like sum each to the satisfaction of the Fast Track Special Sessions Judge for Trial and Disposal of Cases under POCSO Act, Ranga Reddy District at L.B Nagar.

LALITHA KANNEGANTI, J

29th December 2021

PVD

HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

Allowed

CRIMINAL PETITION No.9348 of 2021

29th December, 2021

PVD