

HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

CRIMINAL PETITION No.9577 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.124 of 2021 of Madgul Police Station, Rachakonda Commissionerate, registered for the offences punishable under Sections 366, 417, 420, 376 (2) (n), 354 (c), 376 (3) of the Indian Penal Code, 1860 (for short “IPC”) and Section 3 (2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 (for short “SC ST Act”) and Section 5 r/w 6 of the Protection of Children from Sexual Offences Act, 2012 (for short “POCSO Act”).

2. A report was given by the victim girl on 12.08.2021 stating that in the year 2014 she was minor, she went to Sirasanagandla Temple for Gattu Jathara along with her parents, where she met petitioner, who gave his phone number to her. Later, petitioner came to her village, took her on his bike and participated in sexual intercourse with a promise to marry her. It is stated that petitioner kept her at Karmanghat Hostel and participated in sexual intercourse for four times at his brother's house at Vijaypuri Colony, Karmanghat and later when she asked him to marry, he refused stating that she belongs to SC Madiga and his parents will not agree for the marriage. Basing on the said complaint, the above crime was registered.

3. Heard Sri Pole Vishnu, learned counsel for petitioner and learned Assistant Public Prosecutor for respondent-State.

4. Learned counsel for the petitioner submits that petitioner is alleged to have committed the offences punishable under Sections 366, 417, 420, 376 (2) (n), 354 (c), 376 (3) of IPC, Section 3 (2)(v) of SC ST Act and Section 5 r/w 6 of POCSO Act. He submits that even as per the complaint, both the petitioner and victim are in love with each other and they are in physical relationship for a long time i.e. from the year 2014, but the complaint was given in the year 2021 by invoking the sections under POCSO Act. He submits that the alleged offences are not attracted, as it is a consensual relationship between the parties and for extraneous reasons and to mount pressure on the petitioner, the present case is foisted. He submits that absolutely there is no misconception of fact and the complainant is aware of the consequences due to relationship. He submits that petitioner was arrested on 15.11.2021 and from the last 43 days, he is languishing in jail, as such his case may be considered for grant of bail.

5. Learned Assistant Public Prosecutor submits that 164 Cr.P.C statement of victim was already recorded and as per the same, the petitioner threatened and forced her to continue the relationship. He submits that investigation is still pending, at this stage, the petitioner is not entitled for bail.

6. Taking into consideration the allegations in the complaint, where the complainant states that she is in physical relationship with the petitioner from the year 2014 and now the complaint was given in the year 2021 and absolutely nothing has been stated in the complaint about the laches in giving complaint. Further, the

Apex Court in **Maheshwar Tigga v. State of Jharkhand**¹, wherein it was held thus:

“Under Section 90 IPC, a consent given under a misconception of fact is no consent in the eyes of law. But the misconception of fact has to be in proximity of time to the occurrence and cannot be spread over a period of four years. It hardly needs any elaboration that the consent by the appellant was a conscious and informed choice made by her after due deliberation, it being spread over a long period of time coupled with a conscious positive action not to protest. The prosecutrix in her letters to the appellant also mentions that there would often be quarrels at her home with her family members with regard to the relationship, and beatings given to her.

We have given our thoughtful consideration to the facts and circumstances of the present case and are of the considered opinion that the appellant did not make any false promise or intentional misrepresentation of marriage leading to establishment of physical relationship between the parties. The prosecutrix was herself aware of the obstacles in their relationship because of different religious beliefs. An engagement ceremony was also held in the solemn belief that the societal obstacles would be overcome, but unfortunately differences also arose whether the marriage was to be solemnized in the Church or in a Temple and ultimately failed. It is not possible to hold on the evidence available that the appellant right from the inception did not intend to marry the prosecutrix ever and had fraudulently misrepresented only in order to establish physical relation with her. The prosecutrix in her letters acknowledged that the appellant’s family was always very nice to her.

¹ 2021(1) ALD (CrI.) 384 (SC)

The appellant has been acquired of the charge under Sections 420 and 504 IPC. No appeal has been preferred against the acquittal. There is no medical evidence on record to sustain the conviction under Section 323 IPC. No offence is made out against the appellant under Section 341 IPC considering the statement of prosecutrix that she had gone to live with the appellant for 15 days of her own volition.

We have to hesitation in concluding that the consent of the prosecutrix was but a conscious and deliberated choice, as distinct from the involuntary action or denial and which opportunity was available to her, because of her deep-seated love for the appellant leading her to willingly permit him liberties with her body, which according to normal human behavior are permitted only to a person with whom one is deeply in love.”

Taking into consideration the judgment of the Apex Court, this Court deems it appropriate to enlarge the petitioner on bail.

7. Accordingly, this Criminal Petition is allowed. Petitioner-Accused shall be enlarged on bail in connection with COR No.111 of 2021 on the file of Crime No.124 of 2021 of Madgul Police Station, Rachakonda Commissionerate 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 Additional Judicial Magistrate of First Class, Kalwakurthy.

LALITHA KANNEGANTI, J

28th December 2021

PVD

HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

Allowed

CRIMINAL PETITION No.9577 of 2021

28th December, 2021

PVD