

HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

CRIMINAL PETITIONS No. 46 AND 143 OF 2022

COMMON ORDER:

These Criminal Petitions under Section 438 Cr.P.C. are filed by the petitioners – Accused Nos. 2, 3 and 1 respectively seeking bail in the event of their arrest in connection with Crime No. 195 of 2021 on the file of Bommalararam Police Station registered for the offences punishable under Sections 376(2)(n), 417, 341, 384, 323, 504, 506 read with Section 34 IPC. and Sections 3(1)(R)(s), 3(2)(Va) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015.

2. The case of the prosecution is that the de facto complainant lodged a report dated 02.12.2021 with the police alleging that she married one Babu and they were blessed with two sons, however, in view of the differences with him, she has been staying at her parents' home by doing coolie work. It is alleged that when her son fell sick, about 5 years ago, on reliable information, she had taken him to Accused No.1 who gave Pasupu Kumkuma and at that time, Accused No.1 had taken the phone number of the de facto complainant and thereafter, developed intimacy and had sexual intercourse with her at his well in Survey No. 1111 and threatened her not to disclose the same to anybody and continued the said relation with her. It is also alleged that while the matter stood thus, the junior maternal uncle of the de facto complainant borrowed an

amount of Rs.40,000/- from Accused No.1 on 07.07.2018 for which the de facto-complainant's father signed as a witness and in the past, they had taken the land of one Naresh Babu besides the land of Venugopal Reddy as tenant and out of Acs.12.00, they have been cultivating Acs.4.00 of land and paddy in Acs.2.00 was harvested. It is stated that on 17.11.2021, while the de facto-complainant and her mother were transporting rice to Bhongir by tractor for selling, Accused Nos. 1 and 2 stopped them and took 25 bags of rice and also threatened to take her cow under the debt and thereafter, on 01.12.2021, at about 06.00 p.m., while Accused Nos. 1 and 2 were passing through fields, the de facto complainant and her mother requested them for return of 25 bags of rice for which Accused Nos. 1 and 2 abused them touching their caste name and beat them and meanwhile, Accused No.3 also abused them by touching their caste name and threatened to see their end.

3. Learned counsel for the petitioners Sri Papaiah Peddakula submits that the petitioners are arrayed as Accused Nos. 2, 3 and 1. It is submitted that after filing these petitions, Accused No.3 was arrested by the police, as such, the learned counsel is not pressing the petition against the said accused. Learned counsel submits that in the report itself, it is stated that the complainant has narrated the incident that had happened prior to 2018 and for the best reasons known to her and for filing a compliant, it is invented that on 17.11.2021, Accused No.1, his wife and son abused the de facto

complainant, her mother in the name of caste and had taken away 25 bags of paddy and when they insisted for giving back the same, they were abused. Learned counsel submits that on the face of it, none of the allegations attract the offence either under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, 'the Act') or under Section 376(2)(n) IPC. He submits that as contemplated under Section 15(3) of the Act and as per the orders passed by this Court, he has also taken out the notice to the respondent – de facto complainant and the same was returned with an endorsement 'address insufficient'. Learned counsel submits that he has also filed proof of service, as such Section 15(3) of the Act is complied with. Learned counsel submits that entire family has been implicated in this case. He relied on the judgment of the Apex Court in ***Pruthvi Raj Chauhan v. Union of India***¹ and submits that the present Application is maintainable before this Court, hence, the case of the petitioners may be considered for grant of pre-arrest bail.

4. On the other hand, learned Assistant Public Prosecutor submits that there are grave allegations against the petitioners and he has also informed the de facto complainant about the pendency of the bail Applications before this Court. He submits that investigation is pending and in view of the allegations levelled against the petitioners, they are not entitled for grant of pre-arrest bail.

¹ (2020) 4 SCC 727

5. The Hon'ble Apex Court in ***Pruthviraj Chauhan's*** case (supra) observed that

“ concerning the applicability of provisions of Section 438 Cr.P.C. shall not apply to the Act. However, if the complainant does not make out a prima facie case for applicability of the provisions of the Act, the bar created by Section 18 and 18(A)(i) shall not apply.”

“ It would only add a caveat with the observation and emphasize that while considering any application seeking pre-arrest bail, High Court has to balance two interests i.e. the power is not so used to convert the jurisdiction under Section 438 of Cr.P.C., but that it is used sparingly and such orders made in very exceptional cases where no prima facie offence is made out as shown in the FIR, and if such orders are not made in similar cases, the result would inevitably be a miscarriage of justice or abuse of process of law. Therefore, I consider such stringent terms, otherwise contrary to the philosophy of bail, absolutely essential, because a liberal use of the power to grant pre-arrest bail would defeat the intention of Parliament.”

6. Taking into consideration the allegations in the report which occurred prior to 2018 and as nowhere it is stated whether abuse touching the caste name was in the public eye and also in view of the precedent set out in ***Pruthviraj Chauhan's case***, this Court deems it appropriate to grant pre-arrest bail to Accused Nos. 1 and 2.

7. Accordingly, these Criminal Petitions are allowed in so far as Accused Nos. 1 and 2 are concerned. Petitioners – Accused Nos. 1 and 2 shall surrender before the Station House Officer, Bommaramaram Police Station in connection with Crime No. 195 of 2021 within one week from today and on such surrender and on each of them executing a personal bond for

Rs.20,000/- (Rupees twenty thousand only) with two sureties for a like sum each to the satisfaction of the said Station House Officer, they shall be released on bail. It is made clear that no further extension of time will be granted.

8. Criminal Petition No. 46 of 2022 insofar as Accused No.3 is concerned is dismissed as withdrawn.

02nd February 2022

LALITHA KANNEGANTI, J

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