

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

CRIMINAL PETITION NO.1132 OF 2022

ORDER:-

This petition is filed under Sections 437 and 439 of Code of Criminal Procedure, 1973 (for short "Cr.P.C") seeking regular bail to the petitioner/A.1 in connection with Crime No.231 of 2021 of Kondamallepally Police Station, Nalgonda District, wherein the petitioner is alleged to have committed the offences punishable under Section 370(2) of the Indian Penal Code, 1860 (for short 'IPC') and Sections 80 and 81 of the Juvenile Justice Act, 2015.

2. The case of prosecution is that a report was lodged by the *de facto* complainant, who is Supervisor of ICS, Kondamallepally, stating that she came to know by one of the Anganwadi teacher on 18.10.2021 that Dasru and Mounika's female child was not appearing into house, then she went to Korrani Thanda and on enquiry, she came to know that A.1, Salli and Sahana taken advantage of poor status of parents of the child and encouraged them to sell their daughter, for which the parents sold the female child to A.1, Saali and Sahana by taking Rs.1,00,000/- net cash. Basing on the said report, the present crime is registered.

3. Heard Mr.Ponnam Ashok Goud, learned counsel for the petitioner, and learned Assistant Public Prosecutor for the respondent-State.

4. Learned counsel for the petitioner submits that even all the allegations taken on its face value, they do not attract the alleged offences against the petitioner. He submits that the petitioner was arrested and remanded to judicial custody on 15.12.2021 and from the last 62 days he has been languishing in jail. He further submits that the punishment for the offence under Section 370(2) IPC is seven years, which may extend to 10 years, and the police ought to have completed investigation and file charge sheet within 60 days. But, so far the investigation is not completed and charge sheet is not filed. Hence, the petitioner is entitled for bail under Section 167(2) Cr.P.C.

5. On the other hand, learned Assistant Public Prosecutor submits that investigation is pending and in view of the grave allegations levelled against the petitioner, he is not entitled for bail.

6. Section 167 (2) 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) ¹ 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. Further, it is apt to note that the Hon’ble Apex Court in ***Uday Mohanlal Acharya v. State of Maharashtra***¹ observed that personal liberty is one of the 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 detention of 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 in conformity with the provisions of the Criminal Procedure Code, and as such, it could be violative of Article 21 of the Constitution of India. The Hon’ble Apex Court in its recent

¹ (2001)5 SCC 453

judgment in *S.Kasi v. State*² 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 pandemic as is prevailing now. It was emphasized that the right of the accused to be set at liberty takes 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 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, taking into consideration the fact that charge-sheet is not filed within the statutory period of sixty days, as contemplated under Section 167 (2) of Cr.P.C., and petitioner is languishing in jail for more than 60 days, he is entitled to statutory bail.

9. Accordingly, this Criminal Petition is allowed and the petitioner/A.1 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 Additional Judicial First Class Magistrate Court at Devarakonda. On such release, the

² 2020 SCC OnLine SC 529

petitioner shall appear before the Station House Officer, Kondamallepally Police Station, twice in a month i.e., on 1st and 15th of every month between 10.00 a.m. and 1.00 p.m. till the investigation is completed.

Consequently, miscellaneous applications pending, if any, shall stand closed.

LALITHA KANNEGANTI, J

Date :15.02.2022

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