

HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

CRIMINAL PETITION No.1179 of 2022

ORDER:

This petition is filed under Section 438 of the Code of Criminal Procedure, 1973, seeking bail to the petitioner/A1 in the event of his arrest in connection with Crime No.22 of 2022 of Chennaraopet Police Station, Warangal District, registered for the offences punishable under Sections 376-N, 420 and 417 IPC.

2. The case of prosecution is that the de-facto complainant lodged a report stating that she and A1 were fell in love with each other from the last 4 years, and on the pretext of marriage, A1 has committed rape on her in the year 2018 and thereafter, he contacted her physically several times whenever he came to her village. Thereafter, he refused to marry her and trying to suppress her by offering an amount of Rs.25,00,000/- by the elders, but she denied. Hence, she filed the present complaint.

3. Learned Counsel for the petitioner Mr.G. Veera Babu, submits that even as per the complaint, the de-facto complainant was in physical relationship with the petitioner in 2019. He submits that the petitioner and the de-facto complainant are majors and it is a consensual relationship between them, as such, Sections 376, 420 and 417 IPC are not attracted against him as per the allegations in the complaint. Learned counsel has relied on the judgment of the Apex Court in **Maheshwar Tigga v. State of Jharkhand B** {2021(1) ALD (Crl.) 384 (SC)}, wherein it is observed as under:-

“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.

The appellant has been acquitted 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 hesitate in concluding that the consent of the prosecutrix was but a conscious and deliberate 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."

Even as per the complaint averments, it cannot be presumed as mistake of fact and the proximity of time has to be taken into consideration as it is stated in the complaint that in 2019, petitioner has assured to marry her and it is also an afterthought that he continued to have relationship with her till now and hence, his case may be considered for grant of pre-arrest bail.

4. Learned Assistant Public Prosecutor, on the other hand, submits that the petitioner, on the ground that he will marry the de-facto complainant, has induced her and has physical relationship with her. He submits that in view of the allegations leveled against the petitioner and as the investigation is pending, he is not entitled for pre-arrest bail at this stage.

5. As rightly pointed out by the learned counsel for the petitioner that it is stated in the complaint that the petitioner and the de-facto complainant are in physical relationship in 2019 and as per the judgment of the Apex Court in **Maheshwar Tigga's** case, this Court deems it appropriate to grant pre-arrest bail to the petitioner/A1.

6. The Criminal Petition is allowed. Petitioner – Accused No.1 shall surrender before the Station House Officer, Chennaraopet Police Station, Warangal District, in connection with Crime No.22 of 2022 within one week from today and on such surrender and 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, he shall be released on bail. On such release, the petitioner/A1 shall cooperate with the investigation. It is made clear that no further extension of time will be granted.

LALITHA KANNEGANTI, J

15th February, 2022

sj

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Date:15-02-2022

sj