

HON'BLE SMT. JUSTICE LALITHA KANNEGANTI**CRIMINAL PETITION No. 1704 of 2022****O R D E R:**

This Criminal Petition under Section 438 Cr.P.C. is filed by the petitioners – Accused Nos. 2 to 4 in Crime No.138 of 2022 on the file of Miyapur Police Station, Cyberabad District, registered for the offences punishable under Sections 420, 376, 493 IPC, Section 3(2)(v) of SCs and STs (POA) Act, seeking anticipatory bail.

2. Prosecution case is that the de-facto complainant has lodged a complaint stating that in the year 2017, while the de-facto complainant was working at a cafe coffee day, Miyapur, she got acquaintance with A1, who worked along with her, and they fell in love with each other and A1 also married her in his room at Balaji Nagar by tying yellow thread and started leading conjugal life as wife and husband. After few days, when the de-facto complainant went to the native place of A1, wherein his family members are not agreed for their marriage, later they returned to Hyderabad, but A1 has neglected her by insulting in the name of her caste.

3. The learned counsel for petitioners/A2 to A4 Mr. P. Animi Reddy, submits that the petitioners are arrayed as

accused No. 2 to 4 and in the entire complaint, all the allegations are against A1 and the only allegation made against the petitioners is that when the de-facto-complainant came to the house of A1 and informed the petitioners that she wants to marry A1, they refused for the marriage, except these allegations, there are no other allegations against them. Learned counsel submits that by any stretch of imagination and even if all the allegations are taken on its face value, they do not constitute the offences as alleged. He submits that even as per the complaint, the victim was married and after that both the victim and A1 started staying together and thereafter, when he failed to respond to her calls, she came to his house, as such there is no involvement of the petitioners in the alleged offences and only with an intention to pressurize A1, all the family members were roped into this case and hence, their case may be considered for grant of pre-arrest bail.

4. Learned counsel for the 2nd respondent-de-facto-complainant Mr. Karunakar Reddy, submits that as the de-facto-complainant belongs to SC community, the petitioners have refused for the marriage of A1 with her and as the offence is under Section 3(2)(v) of SCs and STs (POA) Act, this application seeking pre-arrest bail is not maintainable in view

of the bar under Section 18 of the SCs and STs (POA) Act and the petitioners are not entitled for pre-arrest bail.

5. The learned Assistant Public Prosecutor, on the other hand, submits that as per the complaint, there are allegations against the petitioners. He submits that the investigation is pending and so far, seven witnesses were examined and as recording of the statement of victim under Section 164 Cr.P.C is pending, the petitioners are not entitled for pre-arrest bail.

6. As rightly pointed out by the learned counsel for the 2nd respondent that in view of the bar under Section 18 of the SCs and STs (POA) Act, pre-arrest bail cannot be granted. 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.”

7. Taking into consideration the fact that the entire allegations are against A1 and as there are no specific overt acts against the petitioners, this Court deems it appropriate to grant pre-arrest bail to the petitioners.

8. Accordingly, this Criminal Petition is allowed. Petitioners – Accused Nos. 2 to 4 shall surrender before the Station House Officer, Miyapur Police Station, Cyberabad District, in connection with Crime No.138 of 2022 within one week from today and on such surrender and executing a personal bond for Rs.20,000/- (Rupees Twenty Thousand only) each 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.

4th March 2022

gv1/sj

LALITHA KANNEGANTI, J