

HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

CRIMINAL PETITION No.1905 of 2022

ORDER:

This Criminal Petition under Sections 437 and 439 Cr.P.C. is filed by petitioner – Accused No.1 in Cr.No.56 of 2022 on the file of Begumpet Police Station, Secunderabad, registered for the offences punishable under Sections 417, 420, 376(2), 323 Read with 109 IPC and under Section 3(2)(v) of SCs & STs (POA) Act, 1989, seeking bail.

2. The case of prosecution is that the de-facto complainant has lodged a complaint stating that she has got acquaintance with A1 in the year 2017, and in the year 2019, A1 had proposed his love and promised to marry her and he used to meet her physically, but when she asked to marry her since 1st January, 2022, he refused and abused her in the name of caste. His parents also abused her in the name of caste and beaten her with hands.

3. Learned counsel for petitioner Mr. S. Nagender, submits that the petitioner is alleged to have committed the offences under Sections 417, 420, 376(2), 323 read with 109 IPC and under Section 3(2)(v) of SCs & STs (POA) Act, 1989. He submits that as contemplated under Section 15(a)(3) of the SCs & STs (POA) Act, 1989, they have impleaded the de-facto complainant as 2nd

respondent. Learned counsel submits that even as per the complaint, the de-facto complainant has acquaintance with A1 in the year 2017, and A1 had proposed his love in the year 2019 and since then, they were in physical relationship. He submits that even in the complaint also, though it is stated that the accused abused her in the name of caste, it was attributed to A2 and assault was attributed to A3 and as far as the petitioner/A1 is concerned, only omnibus allegations were made. He further submits that even if all the allegations in the complaint are taken on its face value, they do not attract the offences as alleged and further, both the petitioner and the de-facto complainant are majors and there was consensual relationship between them and as such, it cannot be said that there is no mistake of fact. 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 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."

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 the petitioner and the victim are in relationship from the year 2019. He further submits that as the petitioner is languishing in jail since 10.02.2022, his case may be considered for grant bail.

4. On the other hand, learned Assistant Public Prosecutor submits that he has informed the de-facto complainant about pendency of this bail petition and further, there are specific overt acts against the petitioner. He submits that the investigation is pending and so far, 4 witnesses were examined and at this stage, the petitioner is not entitled for bail.

5. Taking into consideration the allegations in the complaint, wherein it is stated that the petitioner and the de-facto complainant are known to each other from 2017 and from the year 2019, there was

consensual relationship between them and as the petitioner is languishing in jail from 10.02.022 and also in view of the law laid down by the Apex Court in **Maheshwar Tigga's** case, this Court deems it appropriate to grant bail to the petitioner-A1.

6. The Criminal Petition is therefore, allowed. Petitioner – Accused No.1 shall be enlarged on bail in connection with Crime No.56 of 2022 on the file of Begumpet Police Station, Secunderabad, 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 XI Additional Chief Metropolitan Magistrate, Secunderabad.

LALITHA KANNEGANTI, J

11th March, 2022.

sj