

HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

CRIMINAL PETITION No.1745 of 2022

ORDER:

This Criminal Petition under Sections 437 and 439 Cr.P.C. is filed by petitioner – Accused in Cr.No.1517 of 2021 on the file of Madhapur (Guttala) Police Station, Cyberabad District, registered for the offences punishable under Sections 376 and 384 IPC, seeking bail.

2. The case of prosecution is that the de-facto complainant has lodged a complaint stating that while she was working as an employee in Karvy Company, Gachibowli, in the year 2016, she has acquaintance with the accused, who was working in the same company as a Trainer, and on the pretext of love and marriage, he used to take videos and photos with his mobile and by using those photos and with a malafide intention, he forced her to have physical relationship with him. After some time, she came to know that the accused is a married person and is having a child. That on 10.12.2021, the accused offered a soft drink and when she fell unconscious, he committed rape on her, and when she made proposal for marriage, the accused has intentionally dragged the matter by inducing her.

3. Learned counsel for petitioner Mr. D. Satyanarayana, submits that the petitioner was arrested and remanded to judicial custody on 07.01.2022 and since then, he is languishing in jail. He further submits that even as per the complaint, both the petitioner and the victim are known to each other since 2016 and after that she also came to know that the petitioner is a married person and is having a child and even after that, they were in physical relationship. He further submits that even if all the allegations are taken on its face value, they do not attract the offences as alleged as it is consensual relationship between the parties and only with an intention to implicate the petitioner, the present complaint has been filed. Learned counsel further submits that by any stretch of imagination, it cannot be said that it is a mistake of fact as the victim knowing fully aware of the fact that the petitioner is a married person has continued relationship with him. Learned counsel has relied on the judgment of the Apex Court in **Maheshwar Tigga v. State of Jharkhand B {2021(1) ALD (CrI.) 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 last 6 years and the statement of victim under Section 164 Cr.P.C. is already recorded. He further submits that as the petitioner is languishing in jail since 07.01.2022, his case may be considered for grant bail.

4. On the other hand, learned Assistant Public Prosecutor also does not dispute the fact that the statement of victim under Section 164 Cr.P.C. is recorded. He submits that there are specific overt acts against the petitioner and the investigation is pending and so far, 5 witnesses were examined and at this stage, petitioner is not entitled for bail.

5. Taking into consideration the fact that both the victim and the petitioner are in relationship from 2016 and also the fact that the victim is aware of the fact that the petitioner is a married person and is having a child and even after that, she has continued to have physical relationship with the petitioner 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-accused.

6. The Criminal Petition is therefore, allowed. Petitioner – Accused shall be enlarged on bail in connection with Crime No.1517 of 2021 on the file of Madhapur (Guttala) Police Station, Cyberabad District, 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 XII Additional Metropolitan Magistrate, Cyberabad Commissionerate, Kukatpally, Ranga Reddy District.

LALITHA KANNEGANTI, J

3rd March, 2022.

sj

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Date:03-03-2022

sj