

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

CRIMINAL PETITION No.1904 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/accused in connection with Crime No.248 of 2021 of Chengomul Police Station, Vikarabad District, wherein the petitioner is alleged to have committed the offences punishable under Sections 366(A) and 376 of the Indian Penal Code, 1860 (for short “**IPC**”), Section 5(1) read with 6 of the Protection of Children from Sexual Offences Act, 2012 and Section 9 of the Prohibition of Child Marriage Act.

2. A report was lodged by the *de facto* complainant, who is the mother of the victim, stating that on 27.11.2021 at about 2200 hours she along with her family slept after dinner and on 28.11.2021 at about 0200 hours, when her husband woke up and found that her second daughter did not found in the house, for which they searched here and there, but in vain. About three months back, the petitioner made a proposal that he will marry their daughter, but she did not accept and

she got suspicious over the petitioner. Basing on the said complaint, the present crime was registered.

3. Heard T.C.K. Singh, learned counsel for petitioner and learned Additional Public Prosecutor for respondent-State.

4. Learned counsel for the petitioner submits that petitioner was arrested and remanded to judicial custody on 04.12.2021 and from the last 96 days he is languishing in jail. He submits that so far the prosecution has failed to complete investigation and file charge sheet. As such, the petitioner is entitled for statutory bail under Section 167 (2) Cr.P.C.

5. Learned Additional Public Prosecutor does not dispute the fact that charge sheet is not filed. However, he submits that investigation in the crime is still in progress, as such, at this stage, if the petitioner is enlarged on bail, he will tamper the investigation process. Hence, the petitioner is not entitled for bail.

6. Section 167 (2) of 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. The Hon'ble Apex Court in the case of ***Uday Mohanlal Acharya v.State of Maharashtra***¹ has observed that personal liberty

¹ (2001)5 SCC 453

is one of 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 the detention of the 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 inconformity with the provisions of the Criminal Procedure Code, and as such, it could be violative of Article 21 of the Constitution of India and the Hon'ble Apex Court in recent judgment in *S.Kasi v. State*² wherein it was observed that the infeasible 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 a pandemic situation as is prevailing currently. 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 the construction of a penal statute, the Courts

² 2020 SCC OnLine SC 529

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, as the charge sheet is not filed within the statutory period as contemplated under Section 167 (2) Cr.P.C., the petitioner is entitled for statutory bail, which is an indefeasible right of the accused as laid down by the Hon'ble Apex Court in catena of cases.

9. Accordingly, this Criminal Petition is allowed. The petitioner/accused shall be enlarged on bail on his executing a personal bonds for Rs.20,000/- (Rupees twenty thousand only) with two sureties for a like sum each to the satisfaction of the Judicial First class Magistrate at Pargi, Vikarabad District.

Pending miscellaneous applications, if any, shall stand closed.

LALITHA KANNEGANTI, J

Date: 09.03.2022
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