

HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

CRIMINAL PETITION No.10183 of 2021

O R D E R:

This Criminal Petition under Section 438 Cr.P.C. is filed by petitioner – Accused No.1 in connection with Crime No.1168 of 2021 of Miyapur Police Station, Cyberabad District, registered for the offences punishable under Sections 376 (2), 417, 420, 323, 504 of IPC, seeking pre-arrest bail.

2. A report was lodged by the *de facto* complainant stating that in August, 2020 her parents fixed her marriage with petitioner, who is working as Assistant Manager in Union Bank. After lockdown, complainant went to Pune on account of her job and they were talking with each other over phone. On 26.11.2020 petitioner went to her Flat in Pune and forcibly participated in sexual intercourse with her, on the pretext that they are getting married. Later when the complainant got job in Byjus at Hi-Tech City and staying in Miyapur, petitioner also went there and participated in sexual intercourse. In June, 2021 when the complainant became pregnant, petitioner insisted her for abortion and also insulted the complainant. On 27.08.2021 again the petitioner went to the flat of complainant, sexually assaulted her and informed that his mother rejected his marriage proposal with complainant and fixed his marriage with another woman. Basing on the said report, the present crime was registered.

3. Heard Sri Naidana Sravan Kumar, learned counsel for petitioner and learned Assistant Public Prosecutor appearing on behalf of respondent-State.

4. Learned counsel for petitioner submits that petitioner is alleged to have committed the offences punishable under Sections 376 (2), 417, 420, 323, 504 of IPC. He submits that even as per the complaint, *de facto* complainant and petitioner are in physical relationship from November, 2020 till August, 2021. He submits that even as per the allegations in the complaint, either Section 376 (2) of IPC or 420 of IPC are not applicable to the petitioner. He submits that it is consensual relationship between the parties and further it cannot be said that due to misconception of fact, *de facto* complainant continued physical relationship with the petitioner. In the complaint, it is clearly stated that even after the mother of petitioner refused for the marriage, still *de facto* complainant continued physical relationship with the petitioner. Learned counsel relied on the judgment of the Apex Court in **Maheshwar Tigga v. State of Jharkhand**¹, wherein it was held thus:

“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

¹ 2021(1) ALD (CrI.) 384 (SC)

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."

5. *Per contra*, learned Assistant Public Prosecutor submits that there are serious allegations against the petitioner and all the offences are attracted to the petitioner. He submits that so far eight witnesses were examined and 164 Cr.P.C statement of prosecutrix was recorded and as the investigation is pending, at this stage, petitioner is not entitled for pre-arrest bail.

6. Taking into consideration the fact that *de facto* complainant and petitioner are majors and they continued physical relationship from November, 2020 to August, 2021 and in the light of law laid down by the Hon'ble Apex Court in the case of **Maheshwar Tigga**, this Court deems it appropriate to grant pre-arrest bail to the petitioner.

7. In the result, criminal petition is allowed and the petitioner / A-1 shall be enlarged on bail in the event of his arrest in connection with Crime No.1168 of 2021 of Miyapur Police Station, Cyberabad District on his executing a bond for a sum of Rs.20,000/- (Rupees twenty thousand only) with two sureties each for a like sum to the satisfaction of Station House Officer, Miyapur Police Station, Cyberabad District

LALITHA KANNEGANTI, J

5th January, 2022

PVD

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

CRIMINAL PETITION No.10183 of 2021

05.01.2022

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