

HON'BLE Dr. JUSTICE CHILLAKUR SUMALATHA

CRIMINAL PETITION No.9989 of 2022

ORDER:

Heard Sri Srinivas Kapatia, learned counsel for the petitioner, as well as learned Additional Public Prosecutor who is representing respondent No.1-State.

Seeking the Court grant of pre-arrest bail, the petitioner, who is arrayed as accused No.1 in Crime No.858 of 2022 of Petbasheerabad Police Station, Cyberabad District, is before this Court.

During the course of hearing, when a query was posed by this Court as to why notice was not issued to respondent No.2-defacto complainant, the learned counsel for the petitioner relying upon the ingredients of Section 439(1)(a) Cr.P.C., contended that even at the time of hearing the regular bail application, except for the offences mentioned therein, notice to the defacto complainant is not necessary. In this regard, learned counsel also relied upon the judgment of the High Court of Bombay, Nagpur Bench in the case between ***Rajendrakumar Vs. State of Maharashtra*** in Criminal Application (BA) No.228 of 2022, dated 11.4.2022

and the decision of the High Court of Kerala in the case between ***Vishnu Gopalakrishnan Vs. State of Kerala*** in Case No.4459 of 2020, dated 03.8.2020.

Making his submission, learned counsel for the petitioner contended that the petitioner has not committed any offences whatsoever, much less the offence punishable under Section 376 IPC. Learned counsel also states that as per the contents of the complaint itself, the petitioner married the defacto complainant in the year 2014 and was leading marital life. Thus, the question of the case falling within the ambit of Section 376 IPC does not arise. Learned counsel also states that basing on a trivial issue, respondent No.2 foisted a false case against the petitioner and others, that too regarding a financial transaction. Learned counsel also states that the Court below granted anticipatory bail in favour of the other accused i.e., accused Nos.2 to 4, but dismissed the bail application so far as the petitioner is concerned and therefore, the petitioner is before this Court.

The submission of the learned Additional Public Prosecutor is that the statement of respondent No.2-defacto

complainant was recorded by the Magistrate concerned under Section 164 Cr.P.C.

Gone through the entire material brought on record, more particularly the contents of the complaint. Nothing is brought to the notice of this Court to hold that the petitioner in any way would tamper the evidence or involve in the process of investigation. Having regard to the allegations levelled and more particularly, the projection made that the ingredients of Section 376 IPC are not made out in the complaint, without going deep into the merits of the case in that regard, this Court is of the view that the petitioner is entitled to the relief sought for, however conditionally.

5. Resultantly, this Criminal Petition is allowed with the following conditions:-

- (i) The petitioner/accused No.1 is directed to surrender before the Court concerned within ten (10) days. On such surrender, he shall be enlarged on bail on his executing a personal bond for Rs.50,000/- (Rupees Fifty thousand only) with two sureties for the like sum each to the satisfaction of the Court concerned. The sureties are directed to submit their two latest passport size photographs at the time of

furnishing solvency. One such photograph is ordered to be pasted in the Surety Register against the name of the surety. The other photograph shall be kept in the case record concerned.

(ii) In case, the petitioner/accused No.1 holds a passport, he is directed to surrender the same.

(iii) The petitioner/accused No.1 should not involve in any unlawful activity.

(iv) The petitioner/accused No.1 should afford all assistance for proper investigation of the case.

(v) The petitioner/accused No.1 should not cause the evidence of the offence disappear.

(vi) The petitioner/accused No.1 should not tamper with the evidence in any manner.

(vii) The petitioner/accused No.1 should not by way of inducement, threat or promise, dissuade any person who is acquainted with the facts of the case, from disclosing such facts to the Court or to the Police Officer.

(viii) The petitioner/accused No.1 should ensure his presence whenever required by the Court or Police.

(ix) The petitioner/accused No.1 shall not leave India without previous permission of the court concerned.

(x) The petitioner/accused No.1 shall report before the Station House Officer, Petbasheerabad Police Station, Cyberabad District, on every Monday between 10.30 a.m. and 12.00 p.m. till filing of the final report.

(xi) The petitioner/accused No.1 shall file an affidavit before the court concerned disclosing the following particulars:-

- (1) Contact number
- (2) Mail address
- (3) Residential particulars.

In case, there is any change in the aforementioned details, the petitioner shall intimate the court concerned by giving a fresh affidavit duly mentioning the change. He shall continue to do so till filing of the final report.

Any deviation of the above conditions would entitle the respondent to take appropriate steps for cancellation of the bail granted.

6. As a sequel, miscellaneous petitions pending, if any, shall stand closed

Dr. JUSTICE CHILLAKUR SUMALATHA

24.11.2022
DR