



WEB COPY



Crl.O.P.No.19784 of 2023

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And

Crl.M.P.No. 13974 of 2023

C.V.KARTHIKEYAN, J.

The petitioner/first accused, who apprehends arrest at the hands of the respondent police for the offence punishable under Section 417 of IPC and Section 4 of TNPHW Act 2002 in Crime No.5 of 2023, seeks anticipatory bail.

2. The case of the prosecution is that the defacto complainant whose brother had actually married the sister of the first accused and therefore, the family of the first accused was known to her, had been in relationship with the first accused. It was a consensus relationship and it progressed on the premise that the defacto complainant would ultimately marry the first accused. It is stated that keeping that factor into consideration, they also were in physical relationship. It is also complained that there were photographs taken of the defacto complainant and the first accused.

3. It is stated subsequently that since the brother of the defacto complainant and the sister of the first accused had marital issues relating to which proceedings were pending at Hyderabad, as a counter blast, the first accused had withdrawn himself from the companionship of the



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defacto complainant. It is under those circumstances that the complaint came to be lodged and the First Information Report came to be registered.

4. It was also incidentally mentioned that the first accused had taken photographs of the defacto complainant in compromising positions and taking note of that particular representation, my learned predecessor had directed the first accused to appear before the respondent and hand over his mobile phone.

5. It is today represented by the learned Government Advocate (Crl. Side) that the mobile phone of the first accused had been actually shown to the respondent but he had taken it back and they had made only a preliminary examination of the same but photos could not be found.

6. It is contended that deep investigation will have to be done over the phone by forwarding it to the forensic agency to determine whether any photographs were deleted or not.

7. The defacto complainant is also represented by a counsel, who had also filed the intervening Petition. **The Intervening Petition stands allowed.**



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8. It is the representation of the learned counsel that a consensus relationship took place between the defacto complainant and the first accused on the promise that the first accused would ultimately marry the defacto complainant. As documents, the defacto complainant had also produced certain photographs to show that they were in deep relationship with each other.

9. I have carefully considered the arguments advanced.

10. It is also to be noted that a learned Single Judge of this Court had directed that further investigation should be stopped with respect to the accused Nos. 2 to 5 but had granted permission to the respondent to continue with investigation so far as the allegations against the first accused is concerned.

11. Primary allegation against the first accused is that he had led the defacto complainant to believe that he would marry her and on that promise and on that belief, she had also placed trust in him and he had exploited that particular trust and entered into physical relationship with her. It is contended that he had also taken photographs of her.

12. The one disturbing factor is that though my learned



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predecessor had directed the mobile phone to be handed over by the first accused, the respondent, on cursory examination, were not able to detect any photographs. Photographs could always be deleted and also retrieved. The deleted files would require deeper examination and when the respondent police demanded the phone for that purpose, the first accused had not handed over to them voluntarily.

13. The statement made across the bar today that the phone will be handed over, would not come to the advantage of the first accused.

14. The facts are not in dispute. The brother of the defacto complainant and the sister of the first accused are spouses and consequent to that, there was a proposal that the first accused could marry the defacto complainant. When there is a strong base for such belief by the defacto complainant and that belief had been further nurtured by the first accused, then naturally investigation will have to be done whether there was promise and whether that promise was kept, whether there the promise was held out only with intention to cheat the defacto complainant. These are issues which will have to be investigated.

15. Grant of anticipatory bail is not the answer. Accordingly, this Petition stands dismissed.

30.11.2023

vsg

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