

HON'BLE Dr.JUSTICE CHILLAKUR SUMALATHA

CRIMINAL PETITION No.859 of 2023

ORDER:

1. Heard Sri B.Arjun Rao, learned counsel for the petitioner as well as the learned Additional Public Prosecutor who is representing the Respondent-State. Despite of service of notice upon the 2nd respondent/defacto complainant, none appears.

2. This Criminal Petition is filed under Section 438 Cr.P.C. seeking for grant of pre-arrest bail in favour of the petitioner, who is arrayed as Accused in Crime No.13 of 2023 of Mailardevpally Police Station.

3. The facts of the case in brief as could be perceived through the contents of the complaint are that the *de facto* complainant came into contact with the petitioner three years back and both fell in love with each other. The petitioner promised to marry the *de facto* complainant and participated in the sexual intercourse. When the *de facto* complainant requested the petitioner to marry her, the petitioner declined to marry her stating that both of them belong to a different caste. Basing on the complaint given,

a case was registered against the petitioner that he committed offences punishable under Sections 420, 417, 376 IPC and Section 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act.

4. Making his submission, learned counsel for the petitioner contends that the petitioner has not committed any offences, whatsoever, more particularly any offence attracting the provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act. Learned counsel submits that as the contents of the complaint does not *prima facie* disclose commission of any offence attracting the provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, the petition filed for grant of anticipatory bail is maintainable and relied upon the decision of the Hon'ble Apex Court in the case between **PRATHVI RAJ CHAUHAN VS. UNION OF INDIA & ORS.**,¹ wherein the Hon'ble Apex Court discussing at length with regard to the applicability of Section 438 Cr.P.C. to the offences punishable under the provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of

¹ (2020) 4 SCC 727

Atrocities) Act in the light of Section 18 and Section 18A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, at Paras 10 & 11 of the order, held as follows:-

“10. Concerning the applicability of provisions of Section 438 Cr.P.C., it shall not apply to the cases under Act of 1989. However, if the complaint does not make out a prima facie case for applicability of the provisions of the Act of 1989, the bar created by Section 18 and 18A(i) shall not apply. We have clarified this aspect while deciding the review petitions.

11. The Court can, in exceptional cases, exercise power under Section 482 Cr.P.C. for quashing the cases to prevent misuse of provisions on settled parameters, as already observed while deciding the review petitions. The legal position is clear and no argument to the contrary has been raised.”

5. The contents of the complaint does not disclose that the offence was committed attracting any of the provisions under the special statute. Learned Additional Public Prosecutor also did not state that the alleged acts of the petitioner falls within the said ambit and also the ambit of Section 376 IPC. Learned counsel for the petitioner, during the course of his submission stated that the petitioner is

an Engineering student and his semester exams would commence from 22.02.2023. In case the petitioner is arrested and remanded to judicial custody, his entire career would be spoiled.

6. Having considered the said ground and having regard to the discussion that went on supra, this Court is of the view that the request of the petitioner can be honoured however, conditionally.

7. In the result, the Criminal Petition is allowed with the following conditions:

- (i) The petitioner/Accused is directed to surrender before the concerned Court 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 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) The petitioner/Accused shall report before the Station House Officer, Mailardevpally Police Station on every Sunday between 10.30 a.m. and 12:00 p.m. till filing of final report.
- (iii) The petitioner/Accused should not involve in any unlawful activity.
- (iv) The petitioner/Accused should afford all assistance for the proper investigation of the case.
- (v) The petitioner/Accused should not cause the evidence of the offence disappear.
- (vi) The petitioner/Accused should not tamper with the evidence in any manner.
- (vii) The petitioner/Accused 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) In case the petitioner/Accused holds a passport, he shall surrender the same.
- (ix) The petitioner/Accused should ensure his presence whenever required by the Court or Police.
- (x) The petitioner/Accused shall not leave India

without previous permission of the Court concerned.

(xi) The petitioner/Accused 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 of 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 pre-arrest bail granted.

Dr. JUSTICE CHILLAKUR SUMALATHA

Date: 16.02.2023

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