

HON'BLE Dr.JUSTICE CHILLAKUR SUMALATHA

CRIMINAL PETITION No.1651 of 2023

ORDER:

1. Heard the submission of Sri Pridviraj, learned counsel who argued on behalf of Sri R.Mangulal, learned counsel on record for the petitioner. Also heard the learned Additional Public Prosecutor who is representing Respondent-State.

2. Seeking pre-arrest bail, the present Criminal Petition is filed under Section 438 Cr.P.C. on behalf of the petitioner, who is arrayed as Accused in Crime No.37 of 2023 of Adilabad I Town Police Station, Adilabad District.

3. Learned counsel for the petitioner seeking the relief claimed, contends that the petitioner neither cheated nor forced the defacto complainant for sexual intercourse and the cohabitation, if any, as per the contents of the complaint is voluntary. Learned counsel also states that all the contents of the complaint indeed are false and therefore, anticipatory bail may be granted. Further submitting that voluntary sexual intercourse between a male and a female who attained the age of majority does

not fall within the ambit of Section 376(2)(n) IPC, learned counsel placed reliance upon the decision of the Hon'ble Apex Court in the case between **ANSAAR MOHAMMAD VS.THE STATE OF RAJASTHAN & ANR**¹. In the said case, challenging the order of the High Court which dismissed the application filed for grant of pre-arrest bail, the Hon'ble Apex Court observed as follows:-

“It is the admitted case of the complainant that she was in a relationship with the appellant for a period of four years. It is admitted by Mr.Himanshu Sharma, learned counsel for the respondent No.2/complainant that when the relationship started, she was 21 years of age.

In view of the said fact, the complainant has willingly been staying with the appellant and had the relationship. Therefore, now if the relationship is not working out, the same cannot be a ground for lodging an FIR for the offence under Section 376(2)(n) IPC.

Consequently, we allow the present appeal and set aside the order of the High Court.

The appellant is ordered to be released on bail to the satisfaction of the competent authority.

It is made clear that the observations in the present order are only for the purposes of deciding

¹ 2022 SCC Online

the pre-arrest bail application. The investigation shall proceed uninfluenced by the observations made in the present order.”

4. The submission of the learned Additional Public Prosecutor is that the statement of the victim was recorded under Section 164 Cr.P.C. and the statements of four witnesses were also recorded by the concerned Police.

5. Thus, having considered the submission of the learned counsel for the petitioner and as the statements of material witnesses are also recorded, this Court is of the view that the request of the petitioner can be honoured, however, conditionally.

6. 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, Adilabad I Town Police Station, on every Sunday and Thursday 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: 23.02.2023

ysk

HON'BLE Dr. JUSTICE CHILLAKUR SUMALATHA

CRIMINAL PETITION No.1651 of 2023

Date:23.02.2023

ysk