

THE HON'BLE SMT. JUSTICE G. ANUPAMA CHAKRAVARTHY

CRIMINAL PETITION NO.4672 of 2023

ORDER:-

This petition is filed under Sections 437 and 439 of Code of the Criminal Procedure, 1973 (for short 'Cr.P.C.') seeking bail to the petitioner/Accused in Crime No.310 of 2023 of Narsingi Police Station, Cyberabad Commissionerate, for the offences punishable under Sections 376(2)(n), 417 and 420 of the Indian Penal Code, 1860 (for short "I.P.C.").

2. Heard Sri Avinash Desai, learned Senior Counsel representing Ms. Divya Adepu, learned counsel for the petitioner and learned Additional Public Prosecutor appearing for the respondent-State and perused the record.

3. The case of the prosecution is that the complaint is filed with an inordinate delay of nine (9) years. The petitioner and the *de facto* complainant are in live-in-relationship since 2014. As the petitioner/accused intends to marry some other woman, their relationship got strained and the *de facto* complainant has come up with the present complaint stating that the petitioner cheated her with a false promise to marry her.

4. Learned Senior Counsel for the petitioner contended that with the consent of the *de facto* complainant only, the petitioner continued live-in relationship with her and as the petitioner denied to marry, the *de facto* complainant has given the false complaint against the petitioner and the contents of the complaint also disclose the said fact.

5. Learned counsel had further contended that though there is a specific contention in the report of the *de facto* complainant that the petitioner has forced her to have sexual intercourse with him several times and forcibly made her to consume pills for abortion in the year 2016 and again in 2019, the *de facto* complainant never preferred any complaint at that particular point of time.

6. On the other hand, learned Additional Public Prosecutor contended that the investigation is still pending and as such, the statement of the victim (*de facto* complainant) has to be recorded and the potency test of the petitioner has to be conducted by a Medical Surgeon.

7. Learned Senior Counsel appearing for the petitioner submits that potency test was conducted.

8. Learned Senior Counsel for the petitioner submits that the potency certificate itself will not prove the allegations of rape and it is for the prosecution to prove that the petitioner had sexual intercourse with the *de facto* complainant without her consent and it is a matter of fact, which has to be proved during the course of trial. Admittedly, there is a delay of nine (9) years in filing the complaint. Therefore, it is a fit case to enlarge the petitioner on bail.

9. In view of the facts and circumstances of the case, the Criminal Petition is allowed. The petitioner shall be enlarged on bail subject to the following conditions:

i. Petitioner-accused in Crime No.310 of 2023 of Narsingi Police Station, Cyberabad Commissionerate shall be enlarged on bail on his executing a personal bond for a sum of Rs.50,000/- (Rupees fifty thousand only) with two sureties for a like sum each to the satisfaction of the learned XIII Additional Metropolitan Magistrate, Cyberabad at Rajender Nagar

ii. The Petitioner shall not intricate the witness or tamper any evidence.

iii. The petitioner shall not enter the precincts of Hyderabad City where the victim woman is residing except when required by the police.

iv. He shall cooperate with the police for completion of investigation.

Consequently, miscellaneous applications pending, if any, shall stand closed.

G. ANUPAMA CHAKRAVARTHY, J

Date: 11.05.2023
ESP

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(Allowed)

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