

THE HON'BLE Dr. JUSTICE G. RADHA RANI

CRIMINAL PETITION No.1912 OF 2024

ORDER:

This criminal petition is filed by the petitioner-Accused under Section 438 Cr.P.C. for grant of anticipatory bail in Crime No.21 of 2024 on the file of the Station House Officer, Indalwai Police Station, Nizambad District, registered for the offences under Sections 376(2)(n), 420, 323, 312 of Indian Penal Code(for short 'IPC').

2. The case of the prosecution in brief was that on 06.02.2024 at 21.00 hours, the defacto complainant – victim woman lodged a report before the police stating that she was a married woman and obtained divorce from her husband in the year 2014. Thereafter, the petitioner – Accused, who was working as a Sub-Inspector of Police deceived her stating that he was interested to stay with her for lifetime. Believing him, the victim had sexual relationship with him. Later she became pregnant. When the victim informed the same to the petitioner, he promised to marry her but asked her to undergo abortion. On 31.01.2024, at 05.30 p.m., the petitioner – accused picked the victim in his car and took her to Hyderabad to Pochamma Temple and performed marriage and thereafter, took her to a Hotel. On 01.02.2024, the petitioner – accused dropped the victim at her residence. Later, on 04.02.2024, the petitioner – Accused picked the victim in car, took

her to Hyderabad bypass road and asked her to agree for abortion. As she was not listening to the petitioner – accused, he administered three pills (which were used for abortion) to the victim in the car and asked her not to inform the same to anyone and promised to look after her as a family and dropped her at Tekriyal of Kamareddy. Thereafter, the petitioner – accused was not responding to the calls of the victim. On 04.02.2024, the victim went to Indalwai Police Station and enquired about the petitioner – Accused and she was informed that he was on leave. The victim further stated that the petitioner – accused blocked her on facebook and Whatsapp. Basing on the said report, the above case was registered under Sections 376(2)(n), 420, 323, 312 of Indian Penal Code(for short ‘IPC’).

3. Heard Sri T.Niranjan Reddy, learned Senior Counsel appearing on behalf of Sri Alluri Divakar Reddy, learned counsel for the petitioner and the learned Additional Public Prosecutor.

4. Learned counsel for the petitioner submitted that the ingredients of Sec.376(2)(n) of IPC would not attract, the case would come under consensual sexual relationship and relied upon the judgments of the Hon’ble Apex Court in ***Pramod Suryabhan Pawar v. State of Maharashtra***

*and another*¹; *Dr.Dhruvaram Murlidhar Sonar v. State of Maharashtra and others*² and *Naim Ahamed v. State(NCT of Delhi)*³, wherein the consensual involvement in sexual intercourse by victim without there being any misconception created by the accused would constitute rape or not is discussed. Learned counsel further submitted that when the offence under Section 376(2)(n) of IPC was not attracted, the other offences were punishable only with imprisonment for less than seven years. He further submitted that Section 312 of IPC also would not attract as the petitioner was never pregnant nor had undergone abortion and prayed to grant Anticipatory Bail to the petitioner.

5. The learned Additional Public Prosecutor stated that the victim was sent for medical examination but the medical report was still awaited. If the petitioner was granted bail, he might threaten or influence the witnesses and prayed to dismiss the Anticipatory Bail application filed by the petitioner – Accused.

6. Perused the record.

7. Considering the judgments of the Hon'ble Apex Court in the above cases, as the victim is a major woman and participated in the sexual

¹ (2019) 9 Supreme Court Cases 608

² (2019) 18 Supreme Court Cases 191

³ 2023 SCC Online SC 89

intercourse being well aware of the consequences and as *prima facie* Section 376(2)(n) of IPC would not attract and all the other offences are punishable with less than seven years imprisonment, it is considered fit to enlarge the petitioner on anticipatory bail on certain conditions.

8. In the result, the Criminal Petition is allowed and the petitioner- Accused is granted anticipatory bail, subject to the following conditions:

- (i) The petitioner-accused is directed to surrender before the Station House Officer, Indalwai Police Station, Nizamabad District within a period of fifteen (15) days from today, and on such surrender the said Station House officer, shall release the petitioner 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 said Station House Officer.
- (ii) The petitioner-accused shall not influence or interfere with the investigation or the witnesses. If any adverse report is received against the petitioner-accused, the bail granted is liable to be cancelled.

- (iii) The petitioner - accused shall abide by the other conditions stipulated in Section 438(2) of Cr.P.C.

Miscellaneous applications, if any, pending, shall stand closed.

Dr. G. RADHA RANI, J

February 26, 2024

Vsl/sa

47

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