

THE HON'BLE SRI JUSTICE RAVI CHEEMALAPATI

CRIMINAL PETITION No.5704 OF 2022

ORDER:

This Criminal Petition is filed under Sections 437 & 439 of Criminal Procedure Code ('Cr.P.C.' in short), seeking regular bail, by the petitioner/ Accused No.1 in Crime No.340 of 2022 of Bhavanipuram Police Station, Vijayawada City, registered for the offences punishable under Sections 376 (2)(N), 417, 420, 323, 384, 506 read with 109 of the Indian Penal Code 1908 ('IPC' in short).

2. The case of the prosecution, in brief, is that the *de facto* complainant, on 14.06.2022, gave a complaint stating that she is having acquaintance with the petitioner herein since 16 months and the said acquaintance became love between her and the petitioner. It is alleged that the petitioner, on the pretext of love and marrying the *de facto* complainant, took her to his residence at Gollapudi, Krishna District with the consent of his parents and exploited her sexually. When *de facto* complainant's menstrual cycle got interrupted, she doubted that she might be pregnant. At that time, it is alleged that the petitioner's mother made her to eat papaya and the petitioner gave her some tablets and when she consumed those tablets, her menstrual cycle got resumed. It is also alleged that since that time the petitioner and her parents avoided the *de facto* complainant and friends of the petitioner also threatened her over phone. Further, due to ill-health when she made a phone call to A1, A1 did not respond and A1 abused her in vulgar language and A2 to A5 also supported A1 and abused her and asked him to leave him by saying that A1 dislike her. Hence, the above crime was registered against the petitioner and other accused.

3. Heard Sri R. Arun Kumar, learned counsel for the petitioner and Sri Soora Venkata Sainath, learned Special Assistant Public Prosecutor for the respondent-State.

4. Learned counsel for the petitioner, in elaboration to what has been stated in the grounds, contended that the allegations in the FIR are vague and bald and *prima facie* does not constitute any offence much less the offences alleged in the FIR. It is also contended that the petitioner is languishing in jail since 15.06.2022 and the CrI.M.P.No.925 of 2022 filed by the petitioner was dismissed by the learned Sessions Judge on the ground that the allegations against the petitioner are serious in nature. It is further contended that when the parents of A1 did not agree for the marriage, the *de facto* complainant foisted this false case. In support of his contention, the learned counsel for the petitioner relied on the decision of the Apex Court in **Ansaar Mohammad v. The State of Rajasthan**¹.

5. On the other hand, the learned Special Assistant Public Prosecutor submitted that the allegations are serious in nature. However, the Final Opinion of the Gynecologist, Siddhartha Medical College, Government General Hospital, Vijayawada, based on the clinical history, examination and investigations, there is nothing suggestive of any recent sexual intercourse. But, he submitted that if bail is granted, the petitioner may not co-operate with the investigation and, hence, prayed for dismissal of the Petition.

6. Perusal of the record shows that there is consent between the *de facto* complainant and the petitioner and it is also *prima facie* evident that

¹ 2022 Live Law (SC) 599

when the *de facto* complainant felt that the relationship between her and the petitioner is not going to work out, she filed the present complaint.

As per the decision of the Apex Court relied on by the learned counsel for the petitioner, cited *supra*, when the complainant is willingly stayed and had relationship, 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) of IPC.

The said decision is squarely applicable to the facts of the present case. Taking the submissions of the learned counsel for the petitioner and the material available on record into consideration, this Court is of the view that this complaint was lodged when the relationship between the *de facto* complainant and the petitioner is not working out. In these circumstances, this Court is inclined to grant regular bail to the petitioner, however, by duly taking the apprehension of the learned Special Assistant Public Prosecutor into consideration, on the following conditions:

(i) The petitioner shall be released on bail on his executing self bond for Rs.25,000/- (Rupees twenty five thousand only) with two sureties for a like sum each to the satisfaction of the learned Chief Metropolitan Magistrate, Vijayawada, NTR District;

(ii) The petitioner shall appear before the Station House Officer, Bhavanipuram Police Station, Vijayawada City, once in a week i.e. on every Sunday between 10.00 a.m. and 02.00 p.m. till filing of the charge sheet; and

(iii) The petitioner shall not directly or indirectly contact the complainant or any other witnesses under any circumstances and any such attempt shall be construed as an attempt of influencing the

witnesses and shall not tamper the evidence and shall co-operate with the investigation.

Further, the petitioner shall scrupulously comply with the above conditions and in case of infraction of the same, the prosecution is at liberty to move appropriate application for cancellation of bail.

It is made clear that this order does not, in any manner, limit or restrict the rights of the Police or the investigating agency from further investigation as per law and the finding in this order be construed as expression of opinion only for the limited purpose of considering bail in the above Criminal Petition and shall not have any bearing in any other proceedings.

Accordingly, the Criminal Petition is **allowed**.

Miscellaneous applications, pending if any, shall stand closed.

12th August, 2022

GBS

JUSTICE RAVI CHEEMALAPATI