

HON'BLE SMT. JUSTICE VENKATA JYOTHIRMAI PRATAPA

CRIMINAL PETITION No. 1043 of 2024

ORDER:

The instant criminal petition under Section 439 of the Code of Criminal Procedure 1973 (for short 'the Code') has been filed by the petitioner/accused seeking grant of regular bail in Crime No.386 of 2023 on the file of the Bandar Taluk Police Station, Krishna District, for the offence punishable under Sections 366 and 376 of the Indian Penal Code (for short 'IPC'), Sections 4 and 17 of the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act') and Section 10 of the Prohibition of Child Marriage Act, 2006.

Heard Sri Challa Ajay Kumar, learned counsel for the petitioner and Sri K.Ananda Kumar, learned Assistant Public Prosecutor on behalf of the respondent/State.

The case of the prosecution, in brief, is that the *de facto* complainant is the father of the victim girl. The victim girl and the accused are residents of the same village. The accused used to stalk the victim girl, with his deceitful words in the name of marriage. When both were talking to each other over a phone call, the family members of the victim girl reprimanded her and made it very clear to the victim girl that they would not perform her marriage with the accused. Feeling aggrieved by the words of the family members, the victim girl consumed ants poison powder with water and called the accused over a phone. The

cousin of the victim girl took her to RMP Doctor for treatment. Thereafter, accused took the victim girl to Vijayawada and on the way, at goddess temple, he tied yellow thread over her neck and took her to his relatives house and committed sexual assault on the victim girl. Thereafter, on knowing about lodging of a case by the father of the victim girl, the accused left the victim girl at her house and went away. Initially, on the complaint made by the father of the victim girl, a case was registered for 'child missing' under Section 363 IPC and later the Section of law was altered from Section 363 to Sections 366 and 376 IPC, Sections 4 and 17 of the POCSO Act and Section 10 of the Prohibition of Child Marriage Act.

Arguments advanced at the Bar

Learned counsel for the petitioner would submit that the petitioner was falsely implicated in this case and that petitioner and the victim girl were in love and the matter was placed before the family members, who did not agree for the marriage. It is also stated that the statement of the victim girl would show that they were threatened by the family members, as such, they left the village, married and consummated their marriage and that there is a relationship of wife and husband between the parties, therefore, the ingredients of the offence to attract Section 375 of IPC are not there. Learned counsel further submits that the petitioner has been in judicial custody since 23.12.2023. Learned counsel finally submits that

at the behest of the victim girl, they had ran away from the village and it is a case of elopement of two persons, who were in deep love.

Contrasting the same, learned Assistant Public Prosecutor would submit that it is a case of offence of rape against a minor girl, who is aged about 16 years 5 months. The accused took away the minor girl to the hospital for treatment and later committed aggravated penetrative sexual assault. Learned Assistant Public Prosecutor would submit that the victim girl in her Section 164 Cr.P.C. Statement stated before the learned Magistrate that they were in love with each other, as such, they left the village and married. Seven witnesses were examined and the Court may pass appropriate Orders.

Now the point that would emerge for determination is:

“Whether the petitioner is entitled for his release on regular bail ?”

Analysis

As seen from the record, the petitioner herein is aged about 21 years and the victim girl is 16 years five months. The complaint itself discloses that these two persons were in love. When it came to the notice of the family members of the victim girl, she was reprimanded. The family members flatly denied the wish of the victim girl to marry the petitioner. The complaint further reveals that on the date of the incident i.e., on 18.12.2023 at about 12.00 hours, while the family members were

not in the house, the victim girl consumed ants poison with water and called her cousin and also the accused over a phone. Responding to her call to save her life, the accused rushed and the cousin of the victim girl took her to the hospital. The story continued as the accused took the victim girl on his bike to Vijayawada and on the way at Goddess temple, he tied 'taali' to her. The accused took the victim girl to his relative's house and committed sexual assault on the victim girl.

Recently, a Co-ordinate Bench of the Delhi High Court in **Mahesh Kumar v. State (NCT of Delhi)**¹, dealt with a bail application under similar circumstances. The following observation was made;

“**12.** The prosecutrix and the accused herein might have made a mistake in the affairs of the heart, however, the teenage psychology and adolescent love cannot be controlled by the Courts and therefore the judges have to be careful while rejecting or granting bail in such cases depending on the facts and circumstances of each case. This Court also observes that the attitude towards early love relationships, especially adolescent love, has to be scrutinised in the backdrop of their real life situations to understand their actions in a given situation. The teenagers who try to imitate romantic culture of films and novels, remain unaware about the laws and the age of consent”

(emphasis supplied)

¹2023:DHC:3151

Further, the Hon'ble Apex Court in **Bhagwan Singh v. Dilip Kumar and others**², emphasised the need to look into the unique and peculiar facts of each case, while granting bail, discussed on the law on the point as follows;

“**12.** The grant of bail is a discretionary relief which necessarily means that such discretion would have to be exercised in a judicious manner and not as a matter of course. The grant of bail is dependant upon contextual facts of the matter being dealt with by the Court and may vary from case to case. There cannot be any exhaustive parameters set out for considering the application for grant of bail. However, it can be noted that;

(a) While granting bail the court has to keep in mind factors such as the nature of accusations, severity of the punishment, if the accusations entails a conviction and the nature of evidence in support of the accusations;

(b) reasonable apprehensions of the witnesses being tempered with or the apprehension of there being a threat for the complainant should also weight with the Court in the matter of grant of bail.

(c) While it is not accepted to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought to be always a prima facie satisfaction of the Court in support of the charge.

(d) Frivility of prosecution should always be considered and it is only the element of genuineness that shall have

² 2023 INSC 761

to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to have an order of bail.”

(emphasis supplied)

Further, while dealing with bail applications of this nature, due consideration should be made on various factors like the nature of the offence, heinousness of the crime, punishment and the role of the accused involved.

Coming to the case on hand, the victim girl is a minor and her consent is of no value in the eye of law. According to her, she was in love and she voluntarily left with the Accused, married and had physical intimacy. In the peculiar circumstances and facts of the present case, it is clear that after consuming poison, the victim called Accused and informed him that her family was against her wish to marry him. The conduct of the Accused, as seen from the complaint, is vivid that on knowing that a case was lodged against him, he dropped the girl at her parent's house, which would indicate that his intention was not otherwise dangerous. The complaint would further show that after studying Class-IX, the girl dropped out and was staying at her house. The age of the girl is subject matter of full length of trial.

Coming to Section 366 IPC, the offence is attracted when any woman is kidnapped/abducted with an intent to marry against her will or to have forced/seduced/illicit intercourse. A bare reading of the complaint would prima facie indicate that the girl left her family home on her own, and only on her phone call, the Accused escorted her. On the face of it, this is a case of elopement of two people, who were in love, where unfortunately the victim girl is a minor.

As referred supra, adolescent love cannot be controlled by the Courts and the Judges have to be careful in granting or denying Bails in such matters. In the case of lack of inducement or threat, the Court must be conscious of the fact that they are not dealing with criminals. The record further shows that the petitioner has been in judicial custody since 23.12.2023.

This Court makes it clear that in each case of granting bail, adjudication should depend on its own facts and as in this case, there is consistent version and due to lack of coercion or inducement or threat, it is apposite to allow the present petition.

Accordingly, Criminal Petition is allowed and the Petitioner/Accused is released on bail on executing a personal bond for Rs.20,000/- (Twenty Thousand Rupees Only) with two sureties of like sum each to the satisfaction of the learned Special Judge for

Speedy Trial of Offences under the Protection of Children from Sexual Offences Act, 2012, Machilipatnam.

Needless to mention, observations made, if any, are only for the purpose of adjudication of the bail petition and shall not be construed on the merits of the matter.

As a sequel, pending applications, if any, shall stand closed.

JUSTICE VENKATA JYOTHIRMAI PRATAPA

05.03.2024

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HON'BLE SMT. JUSTICE VENKATA JYOTHIRMAI PRATAPA

CRIMINAL PETITION No. 1043 of 2024

05.01.2024

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