

THE HON'BLE SRI JUSTICE SUBBA REDDY SATTI

CRIMINAL PETITION No.4097 of 2022

ORDER:

Accused No.1 in Crime No.88 of 2022 of Disha Mahila Police Station, Anantapur, Anantapur District, filed the above criminal petition under Section 437 and 439 of Code of Criminal Procedure, 1973 (for short "Cr.P.C") seeking regular bail.

2. The *de facto* complainant lodged complaint stating that she completed LL.B in SKU, Anantapur and from the last six years, herself and petitioner are loving each other. Petitioner is working as CISF constable in Delhi. During Dasara Vacation, 2019, petitioner came down to the village and complainant was staying with her friends in a room in Uma Nagar, Anantapur. She further stated that in the absence of her friends, petitioner came to room and on the promise to marry her, he had sexual intercourse with her. Later, when she asked the petitioner to marry her, he replied her to wait for six months. Though 1½ years have been elapsed, there is no response from the petitioner. When she telephoned to petitioner, he informed complainant that his parents are not accepting for marriage as she belongs to SC community and they belong to washermen community and he also switched off his phone from 31.11.2021. It was further stated that on coming to know about her love affair, parents of complainant confined her to house. On 03.03.2022, she could come out of the house and on 08.03.2022 she along with one Narasimhulu and others went to the house of petitioner, where the parents and brothers of

punishable under Sections 420, 376 of the Indian Penal Code, 1860 (for short “**IPC**”) and Sections 3(2)(v), 3(1)(w), 3(1)(r)(s), 3(2)(v), 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 (for short “**SC ST Act**”). Petitioner was arrested and remanded to judicial custody on 19.05.2022 and since then he is in Central Prison, Anantapur.

3. Heard Sri T.V.Jaggi Reddy, learned counsel for the petitioner and the learned Special Assistant Public Prosecutor for State.

4. Learned counsel for the petitioner would submit that the petitioner is innocent, and he is nothing to do with the alleged offence. He submits that as seen from the F.I.R, there are no *prima facie* ingredients against the petitioner to attract the offence under Section 420 and 376 of IPC and Section 3(2)(v), 3(1)(w), 3(1)(r)(s), 3(2)(v), 3(2)(va) SC ST Act. He submits that going by the complaint, no specific date was mentioned as to when the offence committed, except stating during Dasara Vacation 2019. He also submits that *de facto* complainant is major and also a law graduate at the time of alleged offence. He further submits that the incident as alleged by the *de facto* complainant amounts to consensual sex and hence, Section 376 of IPC does not attract. He also submits that entire investigation is completed and he prayed the Court to grant bail.

5. Learned counsel for the petitioner relied on the following decisions rendered by Hon’ble Apex Court:

(2) Shivashankar alias Shiva Vs. State of Karnataka².

(3) Maheswar Tigga Vs. State of Jharkhand³.

6. *Per contra*, learned Special Assistant Public Prosecutor Sri S.V.Sainath would submit that consent on the ground of fraud would not amount to consensual sex. He also submits that petitioner made the complainant believe that he would marry her and committed the offence and hence, it does not amount to consensual sex and he thus, prayed the Court to dismiss the petition. He further submits that Section 15A(3) of SC ST Act is complied with and police served notice on the *de facto* complainant on 05.07.2022.

7. I have given my anxious consideration and perused the record and instructions. The application is filed under Section 437 and 439 Cr.P.C. seeking release of the petitioners on bail. The Court had to take into consideration several aspects, while granting bail, viz., gravity of crime, character of the evidence, position and status of the accused with reference to victim and witnesses, likelihood of accused fleeing away from justice and repeating the offence, possibility of his tampering with the witnesses and obstructing the course of justice etc.

8. In **Dataram Singh vs. State of Uttar Pradesh and Ors.⁴**, the Hon'ble Apex Court held thus:

6. The historical background of the provision for bail has been elaborately and lucidly explained in a recent decision delivered in *Nikesh Tarachand Shah v. Union of India* [2017 (13) SCALE 609] going back to the days of the Magna Carta. In that decision,

reference was made to *Gurbaksh Singh Sibbia v. State of Punjab* [(1980) 2 SCC 565] in which it is observed that it was held way back in *Nagendra v. King-Emperor* [AIR 1924 Cal 476] that bail is not to be withheld as a punishment. Reference was also made to *Emperor v. Hutchinson* [AIR 1931 All 356] wherein it was observed that grant of bail is the Rule and refusal is the exception.

The provision for bail is therefore age-old and the liberal interpretation to the provision for bail is almost a century old, going back to colonial days.

7. However, we should not be understood to mean that bail should be granted in every case. The grant or refusal of bail is entirely within the discretion of the judge hearing the matter and though that discretion is unfettered, it must be exercised judiciously and in a humane manner and compassionately. Also, conditions for the grant of bail ought not to be so strict as to be incapable of compliance, thereby making the grant of bail illusory.

9. In **P.Chidambaram vs. Central Bureau of Investigation**⁵,

the Hon'ble Apex Court at Para-22 held thus:

"22. The jurisdiction to grant bail has to be exercised on the basis of the well-settled principles having regard to the facts and circumstances of each case. The following factors are to be taken into consideration while considering an application for bail: (i) the nature of accusation and the severity of the punishment in the case of conviction and the nature of the materials relied upon by the prosecution; (ii) reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant or the witnesses; (iii) reasonable possibility of securing the presence of the Accused at the time of trial or the likelihood of his abscondence; (iv) character behaviour and standing of the Accused and the circumstances which are peculiar to the Accused; (v) larger interest of the public or the State and similar other considerations (vide *Prahlad Singh Bhati v. NCT, Delhi and Anr.* [(2001) 4 SCC 280])."

10. In **Kalyan Chandra Sarkar vs. Rajesh Ranjan and Ors.**⁶,

the Hon'ble Apex Court held at Para-11 that –

“The law in regard to grant or refusal of bail is very well settled. The Court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind.

It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are,

- (a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence;
- (b) Reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;
- (c) Prima facie satisfaction of the Court in support of the charge.”

11. In **Dr.Dhruvaram Muralidhar Sonar's** case, relied upon by the counsel for the petitioner, the facts are as follows:

The petitioner therein filed petition under Section 482 of Cr.P.C., to quash the proceedings in F.I.R No.59 of 2000, registered for the offences under Sections 376(2)(b), 420 r/w 34 of IPC and Section 3(1)(x) of SC ST Act. The facts in the said case are that appellant therein is working as Medical Officer in Primary Health Centre and the complainant is working as Assistant Nurse. As per

the contents of F.I.R., she had fell in love with appellant and that she needed a companion as she is a widow and hence, they started living together as husband and wife. The appellant therein acted as if he has married her and maintained a physical relationship with her, however he failed to marry her as promised. Considering those aspects, the Hon'ble Apex Court quashed the case.

“23. Thus, there is a clear distinction between rape and consensual sex. The court, in such cases, must very carefully examine whether the complainant had actually wanted to marry the victim or had mala fide motives and had made a false promise to this effect only to satisfy his lust, as the later falls within the ambit of cheating or deception. There is also a distinction between mere breach of a promise and not fulfilling a false promise. If the Accused has not made the promise with the sole intention to seduce the prosecutrix to indulge in sexual acts, such an act would not amount to rape. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the Accused and not solely on account of the misconception created by Accused, or where an Accused, on account of circumstances which he could not have foreseen or which were beyond his control, was unable to marry her despite having every intention to do. Such cases must be treated differently. If the complainant had any mala fide intention and if he had clandestine motives, it is a clear case of rape. The acknowledged consensual physical relationship between the parties would not constitute an offence Under Section 376 of the Indian Penal Code.”

12. Learned counsel for petitioner also placed reliance upon

Shivashankar alias Shiva's case, wherein it was held that –

“In the facts and circumstances of the present case, it is difficult to sustain the charges levelled against the appellant who may have possibly, made a false promise of marriage to the complainant. It is, however, difficult to hold sexual

the complainant's own allegation that they lived together as man and wife.”

13. In **Maheswar Tigga’s case**, the Hon’ble Apex Court observed that –

“We have no hesitation in concluding that the consent of the prosecutrix was but a conscious and deliberated choice, as distinct from an involuntary action or denial and which opportunity was available to her, because of her deep-seated love for the appellant leading her to willingly permit him liberties with her body, which according to normal human behaviour are permitted only to a person with whom one is deeply in love.”

14. In **Deepak Gulati v. State of Haryana**⁷, the Hon’ble Apex Court has drawn a distinction between rape and consensual sex and held thus:

“This is a case of a prosecutrix aged 19 years at the time of the incident. She had an inclination towards the Accused. The Accused had been giving her assurances of the fact that he would get married to her. The prosecutrix, therefore, left her home voluntarily and of her own free will to go with the Accused to get married to him. She called the Accused on a phone number given to her by him, to ask him why he had not met her at the place that had been pre-decided by them. She also waited for him for a long time, and when he finally arrived, she went with him to a place called Karna Lake where they indulged in sexual intercourse. She did not raise any objection at that stage and made no complaints to anyone. Thereafter, she went to Kurukshetra with the Accused, where she lived with his relatives. Here too, the prosecutrix voluntarily became intimate with the Accused. She then, for some reason, went to live in the hostel at Kurukshetra University illegally, and once again came into contact with the Accused at Birla Mandir there. Thereafter, she even proceeded with the Accused to the old bus-stand in

could get married at the court in Ambala. At the bus station, the Accused was arrested by the police. The Court held that the physical relationship between the parties had clearly developed with the consent of the prosecutrix as there was neither a case of any resistance nor had she raised any complaint anywhere at any time, despite the fact that she had been living with the Accused for several days and had travelled with him from one place to another. The Court further held that it is not possible to apprehend the circumstances in which a charge of deceit/rape can be leveled against the Accused.”

15. Thus, learned counsel would contend that the alleged offence took place during Dasara Vacation, 2019 about three years back. Since the same is a consensual relationship between petitioner and *defacto* complainant, the same does not attract ingredients of Section 376 IPC and prayed to enlarge the petitioner on bail.

16. While considering the application under Section 437 and 439 Cr.P.C, a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken. However, the nature of accusation and the severity of punishment in case of conviction, reasonable apprehension of tampering of the witness or apprehension of threat to the complainant etc. are to be kept in mind.

17. A perusal of the complaint shows that *defacto* complainant and petitioner are love with each other for the last six years. Complainant is a law graduate. As per the complainant, petitioner came down to village during Dasara Vacation, 2019 and at that time she was staying with her friends in a room pursuing her

complainant and on the pretext of marrying her, had sexual intercourse with her. Later, when she demanded the petitioner to marry her, he asked her to wait for six months. Thereafter when the complainant telephoned to petitioner, she told that her parents are not accepting for marriage. The complaint was lodged on 15.05.2022, nearly after three years of alleged incident. By the date of occurrence complainant is major and also law graduate. Going by the averments in the complaint, they are in love for six years though belonged to different caste. In the light of expressions of apex Court, the alleged incident, in the case on hand, would amounts to consensual sex and hence, the offence under Section 376 of IPC may not be attracted. Insofar as the offences under the provisions of SC ST Act are concerned, the sexual intercourse was done by the petitioner, according to complaint, promising to marry her, but not with an intention that she belonged to SC & ST caste. This court came to conclusion, for the purpose of granting bail, basing on the material available, that it is consensual sex. With regard to utterances touching the case, it was allegedly happened when the petitioner was out of state. Further, the offence under Section 420 of IPC is punishable with an imprisonment of below three years. Even the investigation in the case is almost completed and the presence of petitioner accused for custodial interrogation in view of completion of investigation is not necessary.

18. Considering the facts and circumstances of the case, this Court deems it appropriate to grant bail to the petitioner.

sum of Rs.50,000/- (Rupees fifty thousand only) with two sureties each for a likesum to the satisfaction of Additional Judicial Magistrate of First Class, Anantapur, Anantapur District. After release, petitioner shall appear before the Station House Officer, Mahila Police Station, Anantapur three days in a week ie Monday, Wednesday and Saturday for a period of two months between 9.00 a.m. and 12.00 p.m. Petitioner shall not influence the witnesses or tamper with evidence.

It is made clear that the findings in this order be construed as expression of opinion only for the limited purpose of considering the regular bail in the above crime and shall not have any bearing in any other proceedings.

As a sequel, all the pending miscellaneous applications shall stand closed.

SUBBA REDDY SATTI, J

8th July, 2022

PVD