

Telangana High Court

Kotnaka Maheshwer vs State Of Telangana on 5 January, 2021

Bench: T.Vinod Kumar

THE HON'BLE SRI JUSTICE T.VINOD KUMAR

CRIMINAL PETITION No.7085 of 2020

ORDER:

This Criminal Petition, under Sections 437 and 439 of the Code of Criminal Procedure, 1973, is filed seeking grant of regular bail to the petitioner herein, who is arrayed as accused No.1 in Crime No.128 of 2020 on the file of Booth police station, Adilabad District. The offences alleged against the petitioner are under Sections 417, 420, 376(2)(n), 323, 506 read with Section 109 Indian Penal Code (for short 'IPC').

2. Heard learned counsel for the petitioner and learned Public Prosecutor appearing for the respondent State and perused the record.

3. With the consent of the learned counsel appearing for the parties, the criminal petition is taken up for hearing through Video Conferencing in the virtual Court today, i.e. 05.01.2021.

4. Learned Counsel for the petitioner would submit that the provisions of Section 376 IPC do not stand attracted to the facts of the present case, since, the petitioner and the defacto-complainant had consensual sexual relationship for over a period of two years. Learned Counsel for the petitioner would further submit that, since the sexual relationship is consensual, though under the promise of marriage, the same would not fall within the purview of Section 420 IPC, since, the petitioner never had the intention to cheat or dishonestly induce the defacto complainant to enter in sexual relationship from the beginning of the relationship from the year 2018. It is only in the recent past due to certain differences between the petitioner, his family and the defacto complainant, the petitioner is unable to perform marriage with the defacto complainant. Learned Counsel for the petitioner would also further submit that the petitioner is in judicial custody since 12.11.2020 and is facing loss of reputation in the society. Therefore, he prays for grant of regular bail.

5. On the other hand, learned Additional Public Prosecutor would submit that the petitioner under the promise of marrying the defacto-complainant, had sexual relationship with the petitioner over a period of time and is now backing out of the promise to perform marriage. As the petitioner had physically exploited the defacto complainant continuously for over a period of two years, under the promise of marrying the defacto complainant and now having declined, the defacto-complainant has approached the respondent authority and lodged the present complaint on 28.10.2020, whereupon the respondent authority has registered the crime and took up investigation into the matter. Further, the learned Additional Public Prosecutor would submit that as of today, eight witnesses have been examined and the investigation is in progress and the authorities are required to record 164 Cr.P.C. statements in the matter. Learned Additional Public prosecutor would further submit that since the investigation is in advance stage, if the petitioner is granted bail, there is every possibility of tampering with the evidence and also the possibility of influencing the witnesses.

Learned Additional Public Prosecutor would submit that having regard to the grave nature of offence with societal impact, the present petition needs to be dismissed.

6. Having regard to the submissions made as above, and considering the law laid down by the Apex Court in Anurag Soni v. State of Chhattisgarh<sup>1</sup> wherein it has been observed that-

"But for the false promise by the accused to marry the prosecutrix, the prosecutrix would not have given the consent to have the physical relationship. It was a clear case of cheating and deception.

As observed hereinabove, the consent given by the prosecutrix was on misconception of fact. Such incidents are on increase nowadays. Such offences are against the society. Rape is the most morally and physically reprehensible crime in a society, an assault on the body, mind and privacy of the victim. As observed by this Court in a catena of decisions, while a murderer destroys the physical frame of the victim, a rapist degrades and defiles the soul of a helpless female. Rape reduces a woman to an animal, as it shakes the very core of her life. By no means can a rape victim be called an accomplice. Rape leaves a permanent scar on the life of the victim. Rape is a crime against the entire society and violates the human rights of the victim. Being the most hated crime, the rape tantamounts to a serious blow to the supreme honour of a woman, and offends both her esteem and dignity."

this Court is of the view that the sudden shift in attitude and approach of the petitioner towards defacto complainant and refusing to marry her after exploiting physically for over two years, by the petitioner would only go to show that the petitioner under the false promise of marriage had physical relationship with the defacto complainant, who under misconception of fact and promise of marriage had consented to have sexual relationship with the petitioner. Thus, the principles as laid down in the judgement of the Apex court in Anurag Soni case (supra), would clearly stand attracted to the facts of the present case. In view of the above, this Court sees no valid reason or ground for grant of regular bail to the petitioner.

<sup>1</sup> 2019 SCC Online SC 509

7. Accordingly, the Criminal Petition is dismissed.

8. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order.

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JUSTICE T.VINOD KUMAR Date: 05.01.2021 MRKR