

HON'BLE SRI JUSTICE RAVI CHEEMALAPATI**CRIMINAL PETITION No.6684 of 2022****ORDER:**

This Criminal Petition is filed under Section 438 of Criminal Procedure Code ('Cr.P.C.' in short), seeking pre arrest bail, by the petitioner/A-4 in C.C.No.418 of 2022 of on the file of the Court of the learned Additional Junior Civil Judge, Mangalagiri, Guntur District, concerned to Crime No.261 of 2021 of Thulluru Police Station registered for the offence punishable under Sections 498(A) read with 34 of the Indian Penal Code and Sections 3 & 4 of the Dowry Prohibition Act, 1961.

2. The case of the prosecution, in brief, is that the de facto complainant is wife of A-1 and their marriage was performed on 30.05.2021 and at the time of marriage her parents gave dowry and other gold ornaments and that her husband is working as a software engineer in Cardinal Health Company, USA and that the de facto complainant and the accused/A-1 to A-4 were residing under the same roof. It is the further case of the prosecution that the accused/A-1 to A-4 harassed the de facto complainant that the dowry and articles

presented to them at the time of marriage was not commensurate with their family status and that they would have got more dowry if A-1 married another girl and later the de facto complainant learnt that A1 alone booked ticket to USA and when she enquired the accused as to the reason for not taking her to USA along with A-1, the accused/A-1 to A-4 informed her that they were not satisfied with the dowry presented and that the marriage was not performed in a grand way and further they started pressurizing the de facto complainant to get the land registered in the name of A-1 and thus the accused/A-1 to A-4 harassed the de facto complainant and tortured her for getting additional dowry. Based on her complaint, the above crime was registered. The respondent police completed the investigation and filed charge sheet showing A1 and A4 as absconding on the file of the Court of the learned Additional Junior Civil Judge, Mangalagiri. The learned Magistrate took cognizance of the offence vide C.C.No.418 of 2022 and issued Non-Bailable Warrant against the petitioner/A-4, since she was shown absconding in the charge sheet.

3. Heard Sri B. Manoj Kumar, learned counsel for the petitioner/A-4 and Sri Sravan Kumar Naidana, learned Special Assistant Public Prosecutor for the respondent-State.

4. Sri B. Manoj Kumar, learned counsel for the petitioner, would submit that the allegations made against the petitioner/A-4 are not specific and they are omnibus in nature. The petitioner/A-4 being sister of A-1 was roped in this case without there being any truth.

He would further submit that upon registration of the crime, the petitioner/A-4 approached the respondent police, whereupon they served 41A Cr.P.C. notice on her and she has cooperated with the respondent police during the course of investigation and later the police took back the 41A Cr.P.C. notice served on the petitioner stating that its part of their investigation and they have to keep it with them.

He would further submit that, the petitioner/A-4 is a Dentist working in Modern Dental Care Hospital, Lakshmipuram, Guntur since 04.01.2021 and placed on record the certificate evidencing the said fact. He would further submit that though the petitioner was very much available in Guntur and cooperated with the investigating agency, the respondent police, however, shown her as absconding while filing charge sheet.

He would further submit that the petitioner/A-4 is spinster and in case she is arrested her career as well as her marriage alliances would get adversely affected.

He would further submit that the petitioner would abide by any conditions imposed by this Court and she would cooperate for conclusion of trial.

On the above contentions, the learned counsel for the petitioner prayed for grant of anticipatory bail to the petitioner.

5. The learned Special Assistant Public Prosecutor would submit that the petitioner/A-4 did not cooperate with the investigation and appear before the investigating agency, the respondent police filed absconded charge sheet against the petitioner/A-4.

The learned Special Assistant Public Prosecutor would further submit that if the petitioner/A-4 is granted pre arrest bail, she would abscond and delay the progress of trial.

The learned Special Assistant Public Prosecutor, in support of his contention has relied on the decision of the Hon'ble Supreme Court in ***Sanatan Pandey vs. State of Uttar Pradesh and another*** (Special

Leave Petition (Criminal) No.7358 of 2021) that as the petitioner is found absconding while filing charge sheet, she is not entitled for grant of anticipatory bail.

On the above contentions, the learned Special Assistant Public Prosecutor opposed anticipatory bail and sought for dismissal of the petition.

6. In reply to the contention regarding non-entitlement of the petitioner for anticipatory bail, the learned counsel for the petitioner would submit that no proclamation proceedings are initiated against the petitioner/A-4 and thus the mere issuance of NBW, does not in any way disentitle the petitioner from getting the relief of pre arrest bail. In support of his contention, he relied on a decision in ***State of Madhya Pradesh vs. Pradeep Sharma***¹.

7. Perused the contents of the First Information Report and also the charge sheet. The petitioner/A-4 is sister of A-1 and sister-in-law of the *de facto* complainant. The overt act attributed to her is that she along with other accused had harassed the *de facto* complainant for additional dowry. Thus, the overt act attributed to the petitioner is not

¹. (2014) 2 SCC 171

specific, but omnibus in nature. The certificate placed on record would show that the petitioner has been working as a full time dentist in Modern Dental Care, Lakshmipuram, Guntur since 04.01.2021. This attaches strength to the contention regarding availability of the petitioner at Guntur itself and thus the contention of the respondent police regarding her abscondance during investigation, is doubtful.

8. In the decision relied on by the learned counsel for the petitioner referred to above (supra 1) the Hon'ble Supreme Court of India, at para-16 held as follows:

"16. Recently, in *Lavesh v. State (NCT of Delhi)* [(2012) 8 SCC 730 : (2012) 3 SCC (Cri) 1040] , this Court (of which both of us were parties) considered the scope of granting relief under Section 438 vis-à-vis a person who was declared as an absconder or proclaimed offender in terms of Section 82 of the Code. In para 12, this Court held as under : (SCC p. 733)

"12. From these materials and information, it is clear that the present appellant was not available for interrogation and investigation and was declared as 'absconder'. Normally, when the accused is 'absconding' and declared as a 'proclaimed offender', there is no question of granting anticipatory bail. We reiterate that when a person against whom a warrant had been issued and is absconding or concealing himself in order to avoid execution of warrant and declared as a proclaimed offender in terms of Section 82 of the Code he is not entitled to the relief of anticipatory bail."

It is clear from the above decision that if anyone is declared as an absconder/proclaimed offender in terms of Section 82 of the Code, he is not entitled to the relief of anticipatory bail."

9. In the decision relied on by the learned Special Assistant Public Prosecutor, the Hon'ble Supreme Court of India held as thus:

"3.1Thus, from the aforesaid it is found that there is a prima facie case found against the petitioner for the aforesaid offences and even the charge sheet has been filed and the petitioner is found to be absconding. Therefore, this is not a fit case to grant anticipatory bail to the petitioner. The Court shall not come to the rescue or help the accused who is not cooperating the investigating agency and absconding and against whom not only non-bailable warrant has been issued but also the proclamation under Section 82 Cr.P.C. has been issued."

10. The observations made in both the decisions are similar and they go to show that if anyone is declared as an absconder/proclaimed offender in terms of Section 82 of the Code, he is not entitled to the relief of anticipatory bail.

11. In the instant case, Non-Bailable-Warrant was issued against the petitioner/A-4 as she was shown absconding in the charge sheet and it is not the case that proclamation proceedings were initiated and thus, the petitioner cannot at all be termed as a 'proclaimed offender' so as to disentitle her from getting the relief of anticipatory bail. Thus, as per the observations of the Hon'ble Supreme Court and since proclamation proceedings under section 82 Cr.P.C. are not initiated, the present petition is maintainable.

12. In view of the above, keeping in view the fact that entire investigation is completed and charge sheet has already been filed and further considering the avocation of the petitioner/A-4 and her stay at Guntur as evidenced by the certificate placed on record and further the allegations made against her being omnibus, this Court is inclined to grant anticipatory bail to the petitioner/A-4, however, taking due care of the apprehensions of the learned Assistant Public Prosecutor, on the following conditions.

(i) The petitioner/A-4 shall surrender before the learned Additional Junior Civil Judge, Mangalagiri on or before 19.09.2022 and on such surrender the petitioner/A-4 shall be enlarged on bail in C.C.No.418 of 2022 on its file concerned to Crime No.261 of 2021 of Thulluru Police Station on her executing a self bond for a sum of Rs.25,000/- (Rupees twenty five thousand only) with two sureties for a like sum each to the satisfaction of the learned Additional Junior Civil Judge, Mangalagiri.

(ii) The petitioner shall attend the trial Court and cooperate in concluding the trial in C.C.No.418 of 2022.

(iii) The petitioner shall not coerce, threat or induce the witnesses in whatsoever manner.

The petitioner shall scrupulously comply with the above conditions and any infraction thereof will be viewed seriously and it also entails cancellation of bail and in such case prosecution shall move appropriate application for such cancellation.

JUSTICE RAVI CHEEMALAPATI

Date : 05.09.2022

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HON'BLE SRI JUSTICE RAVI CHEEMALAPATI

ALLOWED

CRIMINAL PETITION No.6684 of 2022

Date : 05.09.2022

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