

APHC010070062025



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3369]

THURSDAY, THE SIXTH DAY OF MARCH
TWO THOUSAND AND TWENTY-FIVE

PRESENT

THE HONOURABLE SRI JUSTICE T MALLIKARJUNA RAO

CRIMINAL PETITION NO: 1532/2025

Between:

Pvhv Gopala Sarma

...PETITIONER/ACCUSED

AND

The State Of Andhra Pradesh and
Others

...RESPONDENT/COMPLAINANT(S)

Counsel for the Petitioner/accused:

1.K SUBRAHMANYAM

Counsel for the Respondent/complainant(S):

1.PUBLIC PROSECUTOR

The Court made the following ORDER:

1. This Criminal Petition, under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short, 'BNSS') is filed on behalf of the Petitioner/Accused No.1 seeking anticipatory bail in Crime No.152 of 2024 of Dwaraka Law and Order Police Station, Visakhapatnam City, registered for the offences punishable under Sections 417, 420 and 376(2)(n) of the Indian Penal Code, 1860 (for short, 'IPC').

2. The case of the prosecution, in brief, is that on 09.10.2024, the Defacto Complainant filed a report with the police stating that she is a divorced woman who had posted her bio-data in a WhatsApp group on 23.01.2023 in search of

a suitable match for a second marriage. In connection with this, A1 came into contact with her in October 2023 and expressed an interest in marrying her. A1 sent nude photographs of men and women in compromising positions to her, despite her resistance stalked continuously from October 2022. On 07.12.2023, A1 arrived at Visakhapatnam Airport, took the Defacto Complainant to his house, and requested her to come to his bedroom to view the gold ornaments of his first wife. Taking advantage of the same, A1 committed rape on her forcibly without her consent and threatened the Defacto Complainant not to tell anyone about the forceful sexual intercourse. Thereafter, on 08.12.2023, A1 telephoned her, stated that he no longer wished to marry her, and began evading her telephone calls.

3. Learned counsel for the petitioner submits that the petitioner has been falsely implicated, with the delay in lodging the complaint suggesting an attempt to extort money. The petitioner is a public servant (Technical Officer in Bhabha Atomic Research Centre, Visakhapatnam) within the meaning of Section 21 of the IPC/Section 28 of the BNS, 2023. In the event of his arrest, there is a strong likelihood that he would be suspended pending disposal of the case. The petitioner is willing to face trial and is ready to provide solvent sureties for his release on anticipatory bail.

4. On the other hand, the learned Assistant Public Prosecutor, appearing for the Respondent/State, opposed the grant of anticipatory bail to the petitioner and submitted that given the serious allegation against the petitioner, his custodial interrogation is required during an investigation of the case to find out the details of the case. It is, therefore, submitted that the petitioner ought not to be given the privilege of anticipatory bail.

5. I have heard both sides. Learned counsel on both sides reiterated their submissions, which are on par with the contentions presented in the petition and the report.

6. In ***Mahipal V. Rajesh***¹, the Hon'ble Apex Court held that it is necessary for the Court while considering a bail application, to assess whether, based on the evidentiary record, *prima facie* or reasonable grounds exist to believe that the accused had committed the crime.

7. A Court doesn't need to give elaborate reasons while granting bail, mainly when the case is at the initial stage, and the allegations of the offences by the accused would not have been crystallised as such.

8. In ***Rakesh Baban Borhade Vs. State of Maharashtra and another***², the Hon'ble Apex Court observed that:

“Anticipatory bail not to be granted as a matter of rule but should be granted only when a case is made out and the Court is convinced that the accused would not misuse his liberty”.

9. The material on record shows that the defacto complainant, a divorced woman, posted her bio-data in a WhatsApp group on 23.01.2023 seeking a second marriage. In October 2023, A1 contacted her, expressing interest in marrying her. On 07.12.2023, A1 invited her to his house and asked her to view his first wife's gold ornaments in his bedroom. Taking advantage of the same, A1 forcibly committed rape on her without her consent and also threatened her not to tell anyone about the forceful sexual intercourse.

10. The learned counsel for the petitioner submits that the significant delay in complaining suggests that he has been coached by someone to extort money from the petitioner without any substantial case against him.

11. Based on the Complainant's report, a case under Sections 417, 420, and 376(2)(n) of the IPC was initially registered at Nallakunta Police Station, Hyderabad (Cr.No.341 of 2024). As the offence is said to have occurred within the jurisdiction of Dwaraka Police Station, Visakhapatnam, the case was transferred and re-registered there. Despite some delay in reporting the matter to the police, this Court holds that it is not necessarily detrimental to the

¹ (2020) 2 SCC 118

² 2015 SAR (Criminal) 156

criminal proceedings, as the impact of such delay depends on the specific facts and circumstances of the case.

12. The mere assertion by the petitioner that he is a public servant, as defined under Section 21 of the IPC/Section 28 of BNS, 2023, and the potential for suspension upon arrest, does not constitute a valid ground for granting bail. It is well-established that, in deciding whether to grant bail in a non-bailable offence, the Court must consider, among other factors, the nature and gravity of the offence.

13. In light of the contentions presented in the bail application, and in the absence of any supporting material, it is difficult to accept the petitioner's claim that the conduct of the victim is suspicious, doubtful, or that she is lying.

14. The main concern of the Court while dealing with the present petition is to ensure a free and fair investigation to unveil the truth. To ensure the same, the Court has to keep in mind the gravity of the offence and the chances of having an adverse impact on the investigation in case the petition is granted anticipatory bail.

15. Upon reading the material submitted by the petitioner with the bail application, it can be stated that the Defacto Complainant has prior acquaintance with the petitioner. Furthermore, the petitioner has not refuted the Defacto Complainant's claim regarding their marriage proposal. At this stage, it is difficult to accept the petitioner's assertion that the Defacto Complainant fabricated this case against him due to his refusal to marry her. The veracity of the claims made by both parties will be determined during the course of the investigation. It is not expected that the petitioner be arrested without sufficient material demonstrating his involvement in the commission of the offence.

16. In a case containing serious allegations, the Investigating Officer deserves a free hand to take the investigation to its logical conclusion. The investigation officer, who has been prevented from subjecting the petitioner to

custodial interrogation, can hardly be fruitful in finding prima facie substance in the grave allegations. The possibility of the investigation being effected once the petitioner is released on bail is very much foreseen. Custodial interrogation can be one of the relevant aspects to be considered along with other grounds while deciding an application seeking anticipatory bail.

17. Regarding the prosecution's case, the investigation remains incomplete. The anticipatory bail for the petitioner may adversely impact the ongoing investigation. There is a possibility of threats to the victim, and a prima facie case implicates the petitioner in a serious offence. The nature of the accusations is grave, involving allegations of rape. The investigation agency has not had the opportunity to interrogate the Accused/Petitioner. There is a potential risk of absconding. The material on record, prima facie, establishes a case under section 376 of IPC. The established legal principle is that anticipatory bail is not to be granted as a matter of rule; it should only be given when the Court is convinced that exceptional circumstances warrant such an extraordinary remedy.

18. The petitioner's counsel submitted a copy of the anticipatory bail order of this Court in CrI.P.No.9077 of 2023, dated 23.12.2023, arguing that the facts of the present case closely resemble those in CrI.P.No.9077 of 2023, and based on this similarity, bail may be granted to the petitioner.

19. This Court perused the orders in CrI.P.No.9077 of 2023, wherein the petitioner/accused relied on Writ Petition No.84522 of 2022. The victim stated she had been in a relationship with the petitioner since May 2022 and alleged that her parents confined and tortured her to speak against him. This Court observed that the writ petition failed to establish a link between the alleged promise of marriage and the victim's consent to sexual intercourse. Based on the available material, the petitioner was granted anticipatory bail in CrI.P.No.9077 of 2023.

20. However, it is essential to note that the mere fact of anticipatory bail being granted in another case does not set a precedent for every case. Each

case must be evaluated based on its unique set of facts and circumstances. Therefore, the order in CrI.P.No.9077 of 2023 cannot be applied to the present case, as the facts are distinguishable.

21. Given the seriousness of the allegations against the petitioner, including accusations of forcibly engaging in sexual intercourse and subsequently evading marriage with the Complainant, it is a well-established principle of law that the power to grant bail under Section 438 Cr.P.C., should be exercised sparingly and only in extraordinary circumstances. As no such circumstances have been demonstrated in this case, bail is not warranted.

22. Given the settled principles considering the facts and circumstances of the present case and the fact that the investigation is at a preliminary stage; and while perusing the allegations leveled against the petitioner, and considering the serious allegations against the petitioner and the requirement of his custodial interrogation during investigation of the case and potential punishment in light of the allegations, this Court is of the considered view that this is not a fit case, where the privilege of anticipatory bail be given to the petitioner.

23. It is explicitly clarified that the observations made in this order are preliminary and pertain solely to the decision on the present application without indicating a stance on the case's merits. The Investigating Agency is free to investigate without being influenced by the observations in this order.

24. Consequently, the Criminal Petition, lacking merit, is liable to be ***dismissed***.

Miscellaneous applications pending, if any, shall stand closed.

JUSTICE T. MALLIKARJUNA RAO

Date: 06.03.2025
ASR / SAK

THE HONOURABLE SRI JUSTICE T MALLIKARJUNA RAO

CRIMINAL PETITION NO: 1532/2025

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SAK