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**IN THE COURT OF THE II ADDL. DISTRICT AND
SESSIONS JUDGE AT SHIVAMOGGA**

Dated this the 3rd day of November, 2022.

Present

Smt. B.R. PALLAVI, B.A.L. LL.B.

II ADDITIONAL DISTRICT AND SESSIONS JUDGE
SHIVAMOGGA

CRL.MISC.1009/2022

Petitioners:

1. Manjunatha s/o late Channabasappa.
Aged about 49 years,
Coolie
2. Latha w/o Manjunatha,
Aged about 42 years,
Coolie,
3. Chethan s/o Manjunatha,
Aged about 23 years,
Coolie,

All are residents,
06, Karkuchi "B" Colony,
Tarikere Taluk,
Chikkamagaluru District.

[By Sri B.K.Narayana, Advocate]

-Vs-

Respondents:

1. The Sub Inspector of Police,
Rural Police Station,
Shivamogga.

2. Kum. Meghana d/o Udayakumara,
Student,
Shankaraghatta village,
Bhadravathi Taluk,
Shivamogga District.

[R.1 by Public Prosecutor,
Shivamogga;
R-2 by Sri M.Kiran Mohite,
Advocate]

ORDER ON BAIL PETITION U/S 438 OF CR.P.C

The petitioners have filed this bail petition seeking pre-arrest bail in the event of their arrest in connection with Crime No.222/2022 on the file of this court, registered for the offence punishable under Sections 506, 313, 376 r/w Sec.34 of IPC and Secs. 3(1)(r), 3(1)(s), 3(1)(w(i) (ii), 3(2) (v) of SC/ST [POA] Act, 2015.

2. The brief facts of the case are that, on 09.01.2021, the accused no.1 came in acquaintance with the prosecutrix and intimacy developed between them. The accused no.1, under the pretext of marrying the prosecutrix, on 09.02.2021, came to her house situated at Shankaraghatta village of Bhadravathi Taluk; took her to Lion Safari; on the same day at 10.00 p.m., the accused

no.1 took the prosecutrix to his garden land situated at Karakuchi village of Tarikere Taluk and under the protest of the prosecutrix, pretending that he would marry her, the accused no.1 had forcible intercourse with her. Thereafter, he threatened the prosecutrix with dire consequences if she discloses the said fact to anybody and took her back to house at Shankaraghatta village. It is further alleged that on 11.02.2022 the accused no.1 took the prosecutrix to his house situated at Karakuchi village of Tarikere taluk and repeated the said act, without the consent of the prosecutrix. Due to the said act, the prosecutrix became pregnant and on coming to know the said fact, the accused no.1 got aborted her pregnancy at Mc.Gann hospital, Shivamogga. It is further alleged that thereafter also, the accused no.1 repeated physical relationship with her. The prosecutrix became pregnant and about 5 times, the accused no.1 got aborted her pregnancy. On 11.09.2022 at around 6.00 p.m. the accused no.1 visited the house of the prosecutrix and talked with her. It is further alleged that on 17.09.2022 at around 6.45 p.m. the accused no.1 along

with his parents and elder brother- the accused no.2 to 4 came to the house of the prosecutrix and abused her taking her caste name and asked the prosecutrix to leave Sachin and they will perform marriage of accused no.1 with another lady. If she intervened in the said matter, they will not let her alive. With these allegations, the first information came to be registered against the accused no.1 to 4 for the aforesaid offence. The petitioner no.1 to 3 have been cited as accused no.2 to 4 in the F.I.R.

3. The petitioners have sought for pre-arrest bail on the ground that they are innocent and are not at all involved in the commission of the alleged offence. The alleged offence are not punishable with death or life imprisonment. The respondent no.2 does not belong to SC or ST community and hence, the offence under the provisions of SC/ST (POA) Act will not attract. The respondent police are frequently visiting near the house of the petitioners and informing the inmates of the house that the petitioners are required in connection with the aforesaid offence. Hence, they reasonably apprehend that they may

be arrested by the respondent police. There is delay of 10 days in filing the complaint. Further, contending that the petitioners are ready to abide by any conditions that may be imposed by this court, have sought for pre-arrest bail.

4. Per contra, the learned Public Prosecutor filed objection statement with I.O. report, reiterating the complaint averments and further contended that there are no reasonable grounds made out by the petitioners so as to enlarge them on bail. The materials on record, prima facie establish guilt of the petitioners. If the petitioners are enlarged on bail, there are ample opportunity to commit more offence against the first informant; they may abscond and tamper the prosecution witnesses. There is bar under Sec.18 of SC/ST (POA) Act to grant anticipatory bail to the petitioners. On the above grounds, the learned Public Prosecutor resisted the bail application of the petitioners.

5. This court issued notice to the victim/respondent no.2. She appeared before the court through Advocate and

contended that the accused no.1 is erotic, having sexual relationship with ladies between the age group of 18 to 45 years. He is in the habit of taking the naked photos of ladies and by showing the said photos, threatening them, he used to have coitus with them. The accused no.2 to 4 knowing the relationship of accused no.1 with the prosecutrix, on 17.09.2022 came to the house of the prosecutrix, abused her in filthy language, taking caste name and criminally intimidated her. If the petitioners are released on bail, they may destroy the material evidence and there is life threat to the prosecutrix from the petitioners. Hence, prayed not to grant bail to the petitioners.

6. Heard the arguments of learned counsel for the petitioners, learned counsel for the respondent no.2 and also learned Public Prosecutor.

7. Perused the records. Based on the above, the following points that arise for my consideration are:

POINTS

1 Whether the petitioner no.1 to 3 are entitled for pre-arrest bail under Section 438 of Cr.P.C., as sought for?

2 What order?

8. Now my findings to the above said points are as follows:

Point No.1: In the affirmative,

Point No.2: As per final order,
for the following;

REASONS

9. **Point No.1:** The petitioners have been complained of committing the offence punishable under Sections 506, 417, 313, 376 r/w Sec.34 of IPC., and Secs. 3(1)(r), 3(1)(s), 3(1)(w)(i)(ii), 3(2) (v) of SC/ST (POA) Act, 2015. On perusal of the records, it is seen that, the main allegation is against the accused no.1 that he had forcible intercourse with the prosecutrix repeatedly, under the pretext of marrying her; when the prosecutrix became pregnant, he got aborted her pregnancy about 5 times and in spite of having sexual intercourse with the prosecutrix,

promising to marry her, the accused no.1 did not marry her and cheated her. The allegations against these petitioners is that they abused the prosecutrix taking caste name and threatened her with dire consequence, if she intervened in the marriage of the accused no.1 with another lady. Though the complaint has been filed in view of the offence under the provisions of SC/ST (POA) Act, prima facie there are no materials which would warrant custodial detention of these petitioners. At this stage there are no prima facie materials which would reasonably show the petitioners are involved in commission of heinous crime. In these circumstances, the truth of the allegations made in the first information can be ascertained only at the time of full fledged trial. There are no reasonable grounds, which at this stage prima facie show that the petitioners are guilty of the alleged offence. The apprehension of the learned Public Prosecutor as well as respondent no.2, can be met by imposing suitable conditions. Accordingly, the point No.1 is answered in the affirmative.

10. **Point No.2:** In view of answer to point No.1 in

the affirmative and for the reasons stated above, this Court proceeds to pass the following:

ORDER

The petition filed under Section 438 of Cr.P.C., is hereby allowed.

The petitioner no.1-Manjunatha, petitioner no.2-Latha and petitioner no.3-Chethan are ordered to be released on bail in the event of their arrest in Crime No.222/2022, on their executing personal bond for sum of Rs.50,000/- each with one surety for the like sum, on the following conditions;

1. The petitioner no.1 to 3 shall co-operate with the investigating officer in the investigation.
2. They shall not indulge in commission of any offence.
3. They shall not tamper or threaten the complainant or any other prosecution witnesses either directly or indirectly.

(Dictated to the Stenographer online, corrected, signed and then pronounced by me, this the 3rd day of November, 2022).

[B.R. PALLAVI]
II Addl. District and Sessions Judge,
Shivamogga.

