

**THE HON'BLE SRI JUSTICE RAVI CHEEMALAPATI**

**CRIMINAL PETITION No.5472 OF 2022**

**ORDER:-**

This petition under Section 438 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C.") is filed to enlarge the petitioner on bail in the event of his arrest.

2. The petitioner is accused in Crime No.30 of 2022 of Srikalahasti I Town Police Station, Tirupathi Urban, Chittoor District. A case under Sections 354(a) and 509 of the Indian Penal Code, 1860 (for short "I.P.C.") and Section 67(A) of the Information Technology Act were registered against the petitioner in the above crime.

3. The case of the prosecution in brief is that on 22.02.2022 at 4.00 p.m. the complainant reported that some unknown accused morphed her photos and posted in instagram in different pages and caused damage to her modesty in public though she has blocked the pages. The accused was created number of instagram pages and posted absence picks and thereby caused damages to her chastity. Hence, basing on the report of complainant, registered the said crime.

4. Heard learned counsel for the petitioner and learned Special Assistant Public Prosecutor for respondent.

5. Learned counsel for the petitioner has contended that the contents of the FIR do not make out any case against the petitioner and there is no material to connect the petitioner for the offences alleged. The petitioner is a respectable person and he is resident of Berhampur, Ganjam, State of Odissa. If the

petitioner is arrested he would be put to irreparable loss and hardship and prayed to grant pre arrest bail.

6. On the other hand, learned Special Assistant Public Prosecutor has contended that the petitioner is not cooperating with the investigation and the petitioner did not even receive Section 41-A of Cr.P.C notice and hence, he is not entitled for pre-arrest bail.

7. Per contra, learned counsel for the petitioner contended that the petitioner is very much available and he is not evading any investigation much less Section 41-A of Cr.P.C notice and he will definitely cooperate with the investigation.

8. A perusal of the material available on record would go to show that the petitioner filed CrI.M.P.No.319 of 2022 on the file of the learned III Additional Sessions Judge, Tirupati and the same was dismissed vide its orders, dated 12.07.2022 and he also got filed W.P.No.16532 of 2022 seeking to declare the action of the Station House Officer, I Town Police Station, Srikalahasti, Tirupati District calling through mobile number 6303228626 threatening the petitioner to appear in police station without registering any crime against the petitioner as illegal and arbitrary and the said writ petition was dismissed by this Court on 28.06.2022 as crime was registered. As such, the petitioner is not entitled for pre arrest bail. However, learned counsel for the petitioner has requested this Court to issue a direction to the respondent to follow the procedure contemplated under Section 41-A Cr.P.C.

9. Admittedly, the punishment prescribed for the offences alleged against the petitioner is less than seven years.

10. Therefore, in view of the submissions made by the learned counsel for the petitioner, this Criminal Petition is disposed of with a direction to the Investigating Officer to follow the procedure contemplated under Section 41-A of Cr.P.C and the guidelines prescribed by the Honourable Apex Court in ***Arnesh Kumar v. State of Bihar and another***<sup>1</sup> case against the petitioner in the above crime.

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**JUSTICE RAVI CHEEMALAPATI**

Date : 01.08.2022

SPP

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<sup>1</sup> (2014) 8 SCC 273

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