

THE HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.6313 of 2014

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ORDER:

The petitioner to this anticipatory bail application under Section 438 Cr.P.C., is the sole accused of the crime registered against him for the offences punishable under Sections 417 and 420 IPC.

2. The substance of the accusation against the petitioner is that the *de facto* complainant and her husband are retired teachers, who are erstwhile owners in which premises the accused stated to have lived along with his family two years back for some time as tenant and that in that course he lured with a pretence to make believe of going to transfer 15 guntas of land from out of his 30 guntas of land pending in a court litigation that was going to be decided in his favour. Believing his words, they paid a huge sum of Rs.4,00,000/- out of terminal benefits and also 17 tulas of gold jewellery and thereafter also with a pretence of requirement of Rs.2,00,000/-, when she has no money, cause mortgaged her vacant land situated at Hyderabad and instead of so doing, he alienated the property to one Srinivas of Gajwel for Rs.36,00,000/- and not even paid single paisa and duped, cheated and deceived. Hence to take action.

3. The averments in the bail application run in nine paras within two pages are in saying the petitioner/accused is innocent

and if there was any alleged sale or mortgage, it is a dispute of civil nature and if there is any amount allegedly due by him he has to go to civil Court (paras 5 and 6); that the ingredients of the alleged offences no way attract and the learned Sessions Judge in Crl.M.P.No.561 of 2014 went wrong and dismissed the anticipatory bail of him on 13.05.2014 without adverting to these facts.

4. It is important to note that to maintain an anticipatory bail application, the four ingredients required by Section 438 Cr.P.C., shall have to be made out. It is of late even laid down by reiterating the proposition of law by the Apex Court in **State of Madhya Pradesh Vs. Pradeep Sharma**^[1], at paras 14 and 15 by referring the case in **Adri Dharan Das Vs. State of West Bengal** [(2005) 4 SCC 303], that the anticipatory bail relief under Section 438 Cr.P.C., is some what extraordinary in character and it is to be exercised only in exceptional cases where it appears that the person may be falsely implicated or where there are reasonable grounds for holding that a person accused of an offence is not likely to otherwise misuse his liberty. For that the applicant must show that he has 'reason to believe' that he may be arrested in a non-bailable offence. Use of the expression 'reason to believe' shows that the belief that the applicant may be arrested must be founded on reasonable grounds. Mere 'fear' is not 'belief', for which reason it is not enough, so also the applicant has to show that he has

some sort of vague apprehension that someone is going to make an accusation against him in pursuance of which he may be arrested. Grounds on which the belief of the applicant is based that he may be arrested in a non-bailable offence must be capable of being examined. The provisions cannot be invoked after arrest of the accused. A blanket order should not be generally passed. It flows from the very language of the section which requires the applicant to show that he has reason to believe that he may be arrested and if there is something tangible to go by on the basis of which it can be said that the applicant's apprehension that he may be arrested is genuine. 'Blanket order' should not be passed as it would serve as a blanket to cover or protect any and every kind of allegedly unlawful activity. An order under Section 438 is a device to secure the individual's liberty, it is neither a passport to the commission of crimes nor a shield against any and all kinds of accusations. It is nothing but reiterating the principle laid down by the Constitution Bench of the Apex Court in **Gurubaksh Singh Sibbia Vs. State of Punjab**^[2].

5. The sum and substance of the accusation is crystal clear of there must be foundation for believing that the

petitioner will be arrested by police in the said crime and in the absence of which, he is not entitled to seek anticipatory bail.

6. Section 41(A) Cr.P.C., which came into force w.e.f.01.11.2010, speaks as follows:

- 1) “The police officer shall, in all cases where arrest of a person is not required under the provisions of sub-Section 41(1) Cr.P.C., issue a notice directing the persons against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice.
- 2) Where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice.
- 3) Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officer is of the opinion that he ought to be arrested.
- 4) Where such person, at any time, fails to comply with the terms of the notice or is unwilling to identify himself, the Police Officer may, subject to such orders as may have been passed by a competent Court in this behalf, arrest him for the offence mentioned in the notice”.

With reference to Section 41-A read with 41 Cr.P.C.,

and in **Hema Mishra Vs. State of U.P.**^[3], it was observed referring to the Apex Court's expression **Joginder Kumar Vs. State of U.P.**, ((1994) 4 SCC 260) particularly at 20 that the above provisions make it specific for the police to issue a notice in all such cases, where arrest is not required to be made under clause (b) of sub-Section (1) of the amended Section 41 Cr.P.C.

Section 41(1) reads as follows:

“Any police officer may without an order from a Magistrate and without a warrant, arrest any person –

- (a) who commits, in the presence of a police officer, a cognizable offence;
- (b) against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine, if the following conditions are satisfied, namely –
 - (i) the police officer has reason to believe on the basis of such complaint, information, or suspicion that such person has committed the said offence;
 - (ii) the police officer is satisfied that such arrest is necessary –
 - (a) to prevent such person from committing any further offence; or
 - (b) for proper investigation of the offence; or
 - (c) to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or

(d) to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to the police officer; or

(e) as unless such person is arrested, his presence in the court whenever required cannot be ensured,

and the police officer shall record while making such arrest, his reasons in writing:

Provided that a police officer shall, in all cases where the arrest of a person is not required under the provisions of this sub-section, record the reasons in writing for not making the arrest”.

7. Having regard to the above, it is not even the averment in the bail application that any Police Officer even called, much less served notice or without resorting to said recourse the police are trying to arrest him with some basis, to say any apprehension for arrest by the police; that too as per the mandate of law the police shall proceed under Sections 41 and 41-A Cr.P.C. The application for anticipatory bail is thus without any basis to maintain, without going into the merits to reject with liberty to file fresh application subject to foundation of the provisions to decide on merits.

Hence at the threshold, the Criminal Petition is rejected without going into the merits.

Dr. JUSTICE B.SIVA SANKARA RAO

Date: 27.06.2014

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[\[1\]](#) (2014) 2 SCC 171

[\[2\]](#) AIR 1980 SC 1632

[\[3\]](#) (2014) 4 SCC 453 = 2014(2) ALT (CrI.)178 (SC)