

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL PETITION No.2023 of 2015

ORDER:

The petitioner, who is A.2, filed the present application under Section 438 Cr.P.C., seeking release in the event of his arrest in connection with Crime No.19 of 2015 of Bathalapalli Police Station, Anantapuram District, registered for the offences punishable under Sections 379 and 411 of I.P.C.

The case of the prosecution is as under:

On credible information with regard to illegal transportation of sand, the Sub Inspector of Police along with his staff, while conducting vehicle checking on Anantapuram to Kadiri road, found one tipper bearing No.AP-02-W-4836 coming from Kadiri with sand. The police stopped the vehicle and took the driver of the vehicle into custody. They found that he was transporting the sand, without any valid license. It is stated by the driver of the vehicle that the vehicle belongs to the petitioner/A.2 and at the instance of the petitioner, he was transporting the sand. Basing on these allegations, the above case came to be registered.

The learned counsel for the petitioner submits that the petitioner was not present in the vehicle at the time of incident and the driver of the vehicle has misused the vehicle. The learned Public Prosecutor opposed the criminal petition.

A perusal of the FIR discloses that the driver of the vehicle confessed about the commission of the offence at the instance of the petitioner and that he is involved in transportation of sand since long time. He further stated that he has no license to transport the sand.

While dealing with the relevancy of the confession by a co-accused, the Apex Court in **State through C.B.I. V. Amarmani**

Tripathy^[1], held as under:

"The admissibility or otherwise of the confessional statement and the effect of the evidence already adduced by the prosecution and the merit of the evidence that may be adduced hereinafter including that of the witnesses sought to be recalled are all matters to be considered at the stage of the trial."

Having regard to the said circumstances and in view of the decision referred to above, I am not inclined to grant anticipatory bail to the petitioner. However, the petitioner, if so advised, shall surrender before the appropriate Court and make an application for bail, after giving prior notice to the learned Public Prosecutor, in which event, the same shall be dealt with, in accordance with law, on the same day.

Accordingly, the criminal petition is dismissed. Miscellaneous petitions pending, if any, shall also stand closed.

**C. PRAVEEN
KUMAR, J**

Date: 20.03.2015
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^[1] AIR 2005 SC 3490