

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No. 6728 OF 2016

O R D E R:

This Criminal Petition is filed under Section 438 of Cr.P.C to direct the respondent to release the petitioner/A1 on bail in the event of his arrest. The petitioner has allegedly committed an offence punishable under Section 498-A IPC and under Sections 3 & 4 of Dowry Prohibition Act, 1961.

2. Brief facts are that the petitioner/A1 married the de-facto complainant on 10.06.2011 at R.K. Kalyana Mandapam, Tiruchanur as per Hindu Rites and Customs and during their wedlock a girl child was born. It is stated that the petitioner is working as Software Engineer in Cape Gemini, Bangalore and there were disputes between the petitioner and the de-facto complainant and the petitioner tried to convince the de-facto complainant that the job provides him livelihood. Moreover, the de-facto complainant used to quarrel with the petitioner and he tolerated the torture for the sake of his reputation in the society. The de-facto complainant went to her parents' house in the year 2012, on the pretext of visiting her parents and had never returned to the petitioner's house and the petitioner requested her to come back and sent his relatives to mediate, but in vain. The petitioner even sent legal notice for restitution of conjugal rights and it was not successful. Then the petitioner was constrained to file F.C.O.P. No. 15 of 2016 on 16.12.2015 on the file of Family Court, Nellore. As a counter blast, the present complaint is filed by the de-facto complainant alleging that she was subjected to cruelty for payment of additional dowry. The police registered a case in Crime No. 7 of 2016 and the same is under investigation.

3. Learned counsel appearing for petitioner contended that the other accused were already on bail and the petitioner being an employee is apprehending arrest and in case the petitioner is arrested in the above case he will be put to serious loss.

4. Learned Public Prosecutor opposed the petition as the petitioner is the prime accused in the above crime.

5. Undoubtedly the petitioner is working as an Engineer in a Software Company at Bangalore but the allegations made in the complaint are directly pointing out the prima facie cruelty on the part of the petitioner for the offence punishable under Section 498-A IPC and under Sections 3 & 4 of Dowry Prohibition Act, 1961. Merely because he is working as Software Engineer at Bangalore and filed FCOP, the petitioner cannot be enlarged on bail. Unless the petitioner establishes that there is no prima facie material against him, the Court cannot grant pre-arrest bail to him, when he is alleged to have involved such a serious crime. In ***Siddharam Satlingappa Mhetre Vs. State of Maharashtra and others***^[1], the Apex Court issued certain guidelines, which are as follows :

"The following factors and parameters can be taken into consideration while dealing with the anticipatory bail :

- i) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;**
- ii) The antecedents of the applicant including the facts as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;**
- iii) The possibility of the applicant to flee from justice;**
- iv) The possibility of the accuser's likelihood to repeat similar or the other offences;**
- v) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;**
- vi) Impact of grant of anticipatory bail particularly in case of large magnitude affecting a very large number of people;**
- vii) The Courts must evaluate the entire available material against the accused very carefully. The Court must also clearly comprehend the exact role of the accused in the case. The case in which accused is implicated with the help of Section 34 and 149 of IPC, the Court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;**
- viii) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;**
- ix) The Court to consider reasonable apprehension of tampering of the witnesses or apprehension of threat to the complainant;**
- (x) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail."**

6. Unless some exceptional circumstances are shown, the petitioners cannot be enlarged on pre-arrest bail as per settled law laid down by the Hon'ble Apex Court in ***State of Maharashtra Vs. Mohd. Sajid Husain*** ^[2], wherein the Apex Court laid down the following guidelines for grant of anticipatory bail :

- "1. The nature and gravity or seriousness of accusation as apprehended by the applicant;**
- 2. The antecedents of the applicant including the fact as to whether he has, on conviction by a Court, previously undergone imprisonment for a term in respect of any cognizable offence;**
- 3. The likely object of the accusation to humiliate or malign the reputation of the applicant by having him so arrested; and**
- 4. The possibility of the appellant, if granted anticipatory bail, fleeing from justice."**

7. In the present case the charge against the petitioner is serious not only against the de-facto complainant but also against the society at large. In those circumstances, keeping in view the guidelines laid down by the Apex Court, it is not a fit case to direct the respondent to release the petitioner on bail in the event of his arrest. Hence I see no grounds to enlarge the petitioner on bail. However, at this stage, counsel for the petitioner requested this Court to direct the petitioner to surrender before the concerned Court permitting him to file an application for grant of bail and direct the concerned Court to proceed with the matter on the same day.

8. In view of the request made by the counsel for the petitioner, I find that it is a fit case to direct the Sessions Court to decide the bail application of the petitioner on the same day when it is filed subject to the compliance of all other conditions and also by giving advance notice to the Public Prosecutor.

9. With the above direction, the Criminal Petition is dismissed. As a

sequel thereto, miscellaneous petitions, pending if any, shall stand dismissed.

JUSTICE M.SATYANARAYANA MURTHY

Date: 05.05.2016
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[\[1\]](#) 2011 CrLJ. 3905
[\[2\]](#) AIR 2008 SC 1551