

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.7229 OF 2016

ORDER:

This Criminal Petition, under Section 438 of the Code of Criminal Procedure, 1973 (For short, 'the Cr.P.C.') is filed by the petitioner to grant pre-arrest bail, since he is apprehending arrest in connection with an unregistered crime by the Chikkadapally Police Station, Hyderabad, for the offences punishable under the provisions of the Scheduled Castes and Scheduled Tribes (Prevention Of Atrocities) Act, 1989 (For short, 'S.C. S.T. (POA) Act').

2. The case of the petitioner is that he is Chairman and the

3rd respondent is Managing Director of the A.P. Housefed. Due to some disputes between them, the petitioner gave a complaint to the Chief Minister of Andhra Pradesh and the Director General of ACB against the

3rd respondent complaining some irregularities i.e. misappropriation of funds to a tune of Rs.20.00 crores. On account of such complaints by the petitioner against him, the 3rd respondent, who belongs to the Scheduled Tribe community, is threatening the petitioner to file a false case against the petitioner for the offences punishable under the provisions of S.C.S.T. (POA) Act, if he did not withdraw the said complaints. Thus, the petitioner is apprehending his arrest in connection with an unregistered crime for the offences punishable under the S.C. S.T. (POA) Act and sought for a pre-arrest bail under Section 438 Cr.P.C.

3. Petitioner-accused pleaded innocence of any offence, much less, the offences punishable under the provisions of

the S.C. S.T. (POA) Act. Learned counsel for the petitioner relied upon the judgments of the apex Court in ***Gurbaksh Singh Sibbia v. State of Punjab***^[1] and ***Savitri Agarwal v. State of Maharashtra***^[2]. Relying on the above two judgments, learned counsel for the petitioner sought for pre-arrest bail to the petitioner directing the Station House Officer, Chikkadapally to release the petitioner in the event of his arrest in connection with the unnumbered crime for the offences punishable under the S.C. S.T. (POA) Act.

4. The learned Public Prosecutor contended that he has to obtain instructions from the concerned police and at this stage, bail cannot be granted.

5. The main apprehension of petitioner is that, police may arrest him in connection with the offences punishable under the provisions of the S.C.S.T. (POA) Act. Of course, as a part of investigation, if there is any possibility of interfering with investigation by petitioner-accused or to collect important material, police may arrest petitioner as a part of investigation, but that by itself is not a ground to grant pre-arrest bail to petitioner.

6. Grant of pre-arrest bail is not a matter of course, it is a matter of exception. 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***^[3], 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 another decision reported in ***Siddharam Satlingappa Mhetre Vs. State of Maharashtra and others***^[4], the Apex Court held 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.”

8. Scheduled Castes and Scheduled Tribes (POA) Act is a special enactment and it is complete code specifying special procedure for trial of the offences under the Act, so also for grant of bail and pre-arrest bail. The Act itself created an interdict against grant of pre-arrest bail in Section 18, which reads as follows :

“18. Section 438 of the Code not to apply to persons committing an offence under the Act : Nothing in Section 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence under this Act.”

9. Thus, in view of the specific bar under the Act, the person who is apprehending arrest in connection with the offence punishable under the provisions of this Act is not entitled to claim any pre-arrest bail. While deciding pre-arrest bail applications, this Court must advert to the material on record and if satisfied that there is *prima-facie* material to show that the petitioner committed an offence punishable under any of the provisions of the Act, this Court is bound to decline grant of pre-arrest bail in view of the special procedure contemplated under Section 18 of the Act. If for any reason, the Court finds that there is no *prima-facie* material to attract the offences punishable under the penal provisions of the Act, the Court may grant pre-arrest bail subject to other conditions referred in the decisions cited *supra*.

10. It is settled principle of law that an application for pre-arrest bail could be considered without detailed description of evidence and elaborate documentation of merits was to be avoided. Thus, no party had impression that his case was prejudged. Existence of *prima-facie* case alone shall be considered rather than elaborate analysis or exhaustive exploration of merits. Hence, question of grant of bail in offences of serious nature could be decided keeping in view the nature and seriousness of such offence, character of evidence and larger public interest.

11. Courts shall exercise their power judiciously and reliefs granted by them shall be logical and tenable within framework of law, as held by the Apex Court in ***Vaman Naraih Ghiya Vs. State of Rajasthan***^[5].

12. In the instant case, admittedly, no crime was registered

as per the allegations made in the petition, but across the Bench, the learned counsel for the petitioner submitted that today at 1.30 p.m., after filing the present petition, Chikkadapally Police have registered a crime against the petitioner. The same was not substantiated by any material. Unless the Court comes to a conclusion that a crime was registered against the petitioner for a non-bailable offence and that there is a reasonable apprehension of his arrest by the police in connection with such non-bailable offence, the Court cannot grant blanket order of pre-arrest bail. The apex Court in **Gurbaksh Singh Sibbia's** case (supra 1), which the petitioner relied on, in paragraph Nos.40, 41, 42, 43 and 44 laid down five guidelines for grant of pre-arrest bail. However, in paragraph No.45, the apex Court observed as follows:

“We have said that there is one proposition formulated by the High Court with which we are inclined to agree. That is proposition No. (2). We agree that a 'blanket order' of anticipatory bail should not generally be passed. This flows from the very language of the section which, as discussed above, requires the applicant to show that he has "reason to believe" that he may be arrested. A belief can be said to be founded on reasonable grounds only 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. That is why, normally, a direction should not issue Under Section [438\(1\)](#) to the effect that the applicant shall be released on bail "whenever arrested for whichever offence whatsoever." That is what is meant by a 'blanket order' of anticipatory bail, an order which serves as a blanket to cover or protect any and every kind of allegedly unlawful activity, in fact any eventuality, likely or unlikely regarding which, no concrete information can possibly be had. The rationale of a direction Under Section [438\(1\)](#) is the belief of the applicant founded on reasonable grounds that he may be arrested for a non-bailable offence. It is unrealistic to expect the applicant to draw up his application with the meticulousness of a pleading in a civil case and such is not requirement of the section.; But specific events; and facts must be disclosed by the applicant in order to enable the court to judge of the reasonableness of his belief, the existence of which is the sine qua non of the exercise of power conferred by the section.

Apart from the fact that the very language of the statute compels this construction, there is an important principle involved in the insistence that facts, on the basis of which a

direction Under Section [438\(1\)](#) is sought, must be clear and specific, not vague and general. It is only by the observance of that principle that a possible conflict between the right of an individual to his liberty and the right of the police to investigate into crimes reported to them can be avoided.

A blanket order of anticipatory bail is bound to cause serious interference with both the right and the duty of the police in the matter of investigation because, regardless of what kind of offence is alleged to have been committed by the applicant and when, an order of bail which comprehends allegedly unlawful activity of any description whatsoever, will prevent the police from arresting the applicant even if he commits, say, a murder in the presence of the public. Such an order can then become a charter of lawlessness and a weapon to stifle prompt investigation into offences which could not possibly be predicated when the order was passed. Therefore, the court which grants anticipatory bail must take care to specify the offence or offences in respect of which alone the order will be effective. The power should not be exercised in a vacuum."

13. The same principle is reiterated in the other judgment relied on by the learned counsel for the petitioner. From the law declared by the apex Court in ***Gurbaksh Singh Sibbia's*** case (supra 1), it is clear that the Court cannot grant a bail in a vacuum, unless the apprehension is supported by any material.

14. In the present facts, there is absolutely nothing to substantiate the apprehension or reasonable apprehension of the petitioner that he will be arrested in connection with a non-bailable offences punishable under the provisions of the S.C.S.T. (POA) Act. Therefore, by following the principle in ***Gurbaksh Singh Sibbia's*** case (supra 1), I am not inclined to grant any pre-arrest bail to the petitioner in vacuum. That apart, a special procedure is contemplated under Section 37 of the S.C.S.T. (POA) Act, which I referred in the earlier paragraphs, that unless the Court comes to a conclusion that the petitioner did commit any offence punishable under the provisions of the S.C.S.T. (POA) Act, the Court cannot grant pre-arrest bail.

15. In the facts of the present case, I find absolutely no

material for apprehension of arrest of the petitioner in connection with any offence punishable under the provisions of the S.C. S.T. (POA) Act and in view of the bar under Section 37 of the S.C. S.T. (POA) Act, the petitioner is disentitled to claim any relief in this petition.

16. In the result, the Criminal Petition is dismissed.

**M. SATYANARAYANA
MURTHY, J**

May 06, 2016.
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[\[1\]](#) AIR 1980 sc 1632

[\[2\]](#) AIR 2009 SC 3173

[\[3\]](#) AIR 2008 SC 1551

[\[4\]](#) 2011 CrI.L.J. 3905

[\[5\]](#) AIR 2009 SC 1362