

CRIMINAL PETITION No. 2712 of 2017

ORDER:

This Criminal Petition under Section 438 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'), is filed to enlarge the petitioner/A-5 on pre-arrest bail since he is apprehending arrest in connection with Crime No.97 of 2015 of Police Station, Gopalapuram, West Godavari District, registered for the offences punishable under Sections 420, 120-B, 506 r/w 34 of IPC and Section 3(i)(iv) & 2(v) of SCs and STs (POA) Act.

The de facto complainant by name Peethala Prasad Rao who belong to scheduled caste filed a private complaint before the II Additional Judicial Magistrate of First Class, Kovvur alleging that the petitioner along with others fraudulently collected Rs.25 lakhs and cheated the de facto complainant along with other accused and threatened to kill the de facto complainant if demand is made to repay the same.

The allegations made in the complaint discloses that this petitioner collected Rs.25 lakhs on various dates and induced the de facto complainant with dishonest intention, collected huge amount, that he did not repay the same, and when demanded for repayment, he threatened with dire consequences, thereby intimidated him criminally. The Magistrate after exercising powers under Section 156(3) of Cr.P.C. referred the matter to the Station House Officer, Police Station, Gopalapatnam and on receipt of the

reference under Section 156(3) Cr.P.C., the police registered the above crime and issued F.I.R.

The main contention of the petitioner is that the petitioner is also a member of scheduled caste and produced the copy of the community certificate dated 28.11.2004 issued by Mandal Revenue Officer, Mandavalli and thereby the bar under Section 18 of the S.C. and S.T. has no application and further the material on record does not disclose prima facie that the petitioner did commit no offence much less the offence punishable under Sections 420 and 506(2) r/w 34 IPC and prayed for enlargement of petitioner on pre-arrest bail.

The private complaint though filed in the year 2015, it was referred immediately, but it is pending since 22.06.2015 with the police and till today, the investigation is not completed. The petitioner is a paster though he belongs to scheduled caste as per certificate, he is professing Christianity, thereby he is a member of a scheduled caste based on certificate. However, making such dishonest inducement and borrowing the amount from the de facto complainant, still an offence committed by the petitioner as defined under Section 415 IPC, punishable under Section 420 of IPC. Therefore, I find prima facie material against the petitioner for the offences punishable under Sections 420 and 506 of IPC and he collected Rs.25 lakhs from the de facto complainant making such inducement with dishonest intention and apart from that the petitioner committed similar offence which is a subject matter of Crime No.188 of 2012 of Gopalapatnam Police Station for the offence punishable under Section 420 of IPC. Therefore, the

petitioner is in the habit of collecting amount dishonestly inducing the gullible villagers and avoiding payment and if such person is encouraged by enlarging him on bail, there is every possibility of committing identical offences of cheating the public at large and that the investigation is not completed till today. Therefore, there is every possibility of threatening any witness. In such a case, the petitioner cannot be enlarged on pre-arrest bail.

The power of the Court under Section 438 Cr.P.C is purely discretionary and this Court has to exercise its power judiciously based on settled principles. As I find prima facie material against the petitioner to conclude that the petitioner did commit an offence, I am not inclined to exercise my discretion in favour of the petitioner to grant pre-arrest bail. Consequently, the petition is liable to be dismissed.

In the result, this Criminal Petition is dismissed.

Miscellaneous petitions, if any, pending in this criminal petition, shall stand closed.

M. SATYANARAYANA MURTHY, J

Date:07.04.2017
ccm

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY



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ccm