

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.3028 OF 2017

ORDER:

This petition is filed under Section 438 of Criminal Procedure Code (for short "Cr.P.C.") by the petitioners/accused, apprehending their arrest, in Crime No.19 of 2017 on the file of Thulluru Police Station, Guntur District, registered for the offences punishable under Sections 323 and 506 read with 34 of Indian Penal Code (for short "I.P.C.") and under Section 3 (1) (r) (s) of S.Cs. and S.Ts. (POA) Act, to direct the Station House Officer, Thulluru Police Station, Guntur District to release them on bail in the event of their arrest in connection with the above crime.

One B.Rajesh, who belongs to Scheduled Caste, lodged a complaint with police dated 27.01.2017 alleging that he is a mason and constructing the residential house of B.Sambasiva Rao on contract basis for the last six months, along with 15 others. On the northern side, one Y.Sambireddy own a house, and while they are attending to masonry work, defacto complainant arranged gunny bags as curtains to prevent fall of cement into the compound of Y.Sambireddy. On 24.01.2017 while they are attending to work at about 12.00 noon, the said Sambireddy along with his wife came to the defacto complainant and questioned their work while complaining that some cement is falling into their compound and picked up quarrel and in the said quarrel, the petitioners abused the defacto complainant raising his caste name as "**Mala naa kodakalara, mee ammalani denga, mee pellarani denga**" and caught hold of his shirt and beat him with hands, kicked him with legs. Thus, the petitioners insulted the defacto complainant with

an intention to humiliate them in the public view and caused injuries on the body of the defacto complainant, who belongs to Scheduled Caste.

Sri Raja Reddy Koneti, learned counsel for the petitioners, with over vehemence contended that police cannot arrest the accused in any case and arrest is not necessary in all the cases. Therefore, in the present case, the arrest of the accused is unnecessary and in spite of that the investigating agency making hectic efforts to arrest these petitioners in the above crime. He placed reliance on “**Joginder Kumar v. State of U.P.**”¹. He also contended that unless custodial interrogation of the petitioners is necessary to elicit truth during investigation, they cannot be arrested as a matter of course and drawn the attention of this Court to Section 41-A of Cr.P.C. to contend that the investigating agency is bound to follow the procedure prescribed under Section 41-A of Cr.P.C.

The main contention before this Court is that the allegations made against these petitioners is false and there were disputes between B.Sambasiva Rao and these petitioners regarding boundary and a suit O.S.No.204 of 2011 was filed by B.Sambasiva Rao against the petitioner No.1 herein on the file of Principal Junior Civil Judge, Mangalagiri with regard to enjoyment of passage between their houses and the same was dismissed. Petitioner No.2 herein also lodged a complaint against B.Sambaiah, which is registered as Crime No.38 of 2016 for the offences punishable under Sections 427, 324, 509, 506 read with 34 of

¹ (1994) 4 SCC 260

I.P.C. as he allegedly dismantled the compound wall of the house. Petitioner No.1 lodged a complaint against B.Narasamma, which is registered as Crime No.51 of 2016 for the offences punishable under Sections 324 and 506 read with 34 of I.P.C. Petitioner No.2 also lodged another complaint against B.Sambasiva Rao, which is registered as Crime No.195 of 2016 for the offences punishable under Sections 427, 506 and 509 read with 34 of I.P.C., and on account of pending criminal complaints against one another, this false complaint is got foisted taking advantage of the caste of the defacto complainant and prayed to enlarge the petitioners on pre-arrest bail.

Learned Public Prosecutor for the State of Andhra Pradesh contended that the petitioners are not cooperating with the investigating officer to complete investigation and notice under Section 41-A Cr.P.C. was issued on 15.02.2017 despite the same the petitioners did not turn up to extend cooperation for completion of investigation and when the petitioners are not cooperating for completion of investigation, the investigating agency may arrest the petitioners if custodial interrogation is necessary since arrest is part of investigation to elicit the truth. Moreover, when the petitioners did not cooperate for completion of investigation, they are disentitled to claim pre-arrest bail under Section 438 of Cr.P.C. and apart from that there is interdict on the Court to grant pre-arrest bail under Section 18 of the S.Cs. and S.Ts. (POA) Act. Therefore, the petitioners are not entitled to claim pre-arrest bail.

Undisputedly, defacto complainant belongs to Scheduled

Caste and attending masonry work along with other coolies in the house of B.Sambasiva Rao, who is adjacent owner of the petitioners' house. Abusive language used against the defacto complainant is narrated in the complaint dated 27.01.2017 and it is difficult to utter such abusive language, in normal life, even a layman may not use such abusive language. Abusing defacto complainant and his wife, who belongs to Scheduled caste causing injuries on his body by catching hold of his shirt, kicking him with legs beating with hands would certainly amount to an offence punishable under Section 3 (1) (r) (s) of S.C.s and S.Ts. (POA) Act, *prima facie*.

The present complaint was lodged on 27.01.2017, whereas the complaint allegedly lodged by the petitioners against B.Sambasiva Rao and his wife are in the year 2016 and the copies of those F.I.Rs are also paced on record, but they are totally different incidents and unconnected with the present incident. On the ground that there were disputes between B.Sambasiva Rao and the petitioners, the petitioners cannot be enlarged on bail. Since defacto complainant B.Rajesh is unconcerned with the disputes being a mason attending to his work to construct the house of B.Sambasiva Rao. Therefore, abusing the defacto complainant using such vulgar language would directly attract the offence punishable under Section 3 (1) (r) (s) of S.Cs. and S.Ts. (POA) Act besides beating the defacto complainant, *prima facie*, constitute offence punishable under Section 323, 506 read with 34 of I.P.C.

The main grievance of the petitioners is that the petitioners cannot be arrested as a matter of course unless their custodial

interrogation is required and learned counsel for the petitioners placed reliance on “**Joginder Kumar v. State of U.P.**” (referred supra), in paragraph No.19 the Apex Court referred to “Royal Commission suggestions” and ultimately concluded that “no arrest can be made because it is lawful for the Police Officer to do so. The existence of the power to arrest is one thing. The justification for the exercise of it is quite another. The Police Officer must be able to justify the arrest apart from his power to do so. Arrest and detention in police lock-up of a person can cause incalculable harm to the reputation and self esteem of a person. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent for a Police Officer in the interest of protection of the constitutional rights of a citizen” and perhaps in his own interest that no arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bonafides of a complaint and a reasonable belief both as to the person's complicity and even so as to the need to effect arrest. Denying a person of his liberty is a serious matter, The recommendations of the Police Commission merely reflect the constitutional concomitants of the fundamental right to personal liberty and freedom. A person is not liable to arrest merely on the suspicion of complicity in an offence. There must be some reasonable justification in the opinion of the Officer effecting the arrest that such arrest is necessary and justified. Except in heinous offences, an arrest must be avoided if a Police Officer issues notice to person to attend the Station House and not to leave Station without permission would do.”

The same principle was reiterated in “**Som Mittal v. Govt. of Karnataka²**”

This legal principle is not in quarrel, but on account of these suggestions only Section 41-A was incorporated in Cr.P.C. by way of amendment. The Apex Court also issued certain guidelines to the investigating agency in “**Arnesh Kumar v. State of Bihar and another³**”. In pursuance of these guidelines and procedure prescribed in Section 41-A of Cr.P.C., the investigating agency issued notice dated 15.02.2017 under Section 41-A of Cr.P.C. but the petitioners did not respond to the notice and did not cooperate with the investigating agency to complete the investigation. In case the petitioners are not cooperating for completion of investigation though notice issued by the police under Section 41-A of Cr.P.C. strictly adhering to the guidelines issued by the Apex Court in “**Arnesh Kumar v. State of Bihar and another**” (referred supra), investigating agency has no other alternative except to proceed in accordance with law since arrest of the accused is part of investigation and certain facts have to be elicited on interrogation by the police.

The requirements to grant pre-arrest bail are that the Court has to conclude *prima facie* the petitioners did commit no offence and that there is no possibility to interfere with the further investigation in the event of their enlargement on bail. But here the petitioners are not cooperating with the investigating agency to complete investigation, on the other hand learned counsel for the petitioners by over vehemence contended that the interrogation of

² AIR 2008 SC 1126

³ (2014) 8 SCC 273

the petitioners is not required and it is for the investigating agency to decide whether any fact has to be elicited during the custodial interrogation after their arrest. Therefore, when the petitioners are not cooperating for completion of investigation, the Court cannot grant pre-arrest bail. On the other hand, the material on record *prima facie* led me to conclude that the petitioners committed serious offence punishable under Sections 323 and 506 read with 34 of I.P.C and under Section 3 (1) (r) (s) of S.Cs. and S.Ts. (POA) Act. There is an interdict to grant pre-arrest bail for the offence punishable under the provisions of the S.Cs. and S.Ts. (POA) Act.

The Apex Court in “**Vilas Panduranga Pawar v. State of Maharashtra**”⁴ discussed about the scope of granting pre-arrest bail to the accused in cases of S.Cs. and S.Ts (POA) Act. In view of the principle laid in “**Vilas Panduranga Pawar v. State of Maharashtra**” a duty is cast on the court to verify the averments in the complaint and to find out whether an offence punishable under the provisions of the S.Cs and S.Ts. (POA) Act has been *prima facie* made out.

In the present case, the abusive language, which I extracted above, would directly amount to insulting the defacto complainant, who belonging to Scheduled Caste with an intention to humiliate him. In such case, bar under Section 18 of the S.Cs and S.Ts. (POA) Act would apply and the petitioners are not entitled to claim 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

⁴ (2012) 8 SCC 795

based on settled principles. But, the circumstances to exercise such jurisdiction may vary from case to case. The law regarding grant of anticipatory bail is elaborately discussed by the Constitution Bench of the Apex Court in “**Gurbaksh Singh Sibbia v. State of Punjab**⁵” as the power of granting 'anticipatory bail' is somewhat extraordinary in character and it is only in exceptional cases where it appears that a person might be falsely implicated, or a frivolous case might be launched against him, or "there are reasonable grounds for holding that a person accused of an offence is not likely to abscond, or otherwise misuse his liberty while on bail" that such power is to be exercised. No hard and fast rule can be laid down in discretionary matters like grant or refusal of bail whether anticipatory or regular bail. The Apex Court further held that, it cannot be laid down as an inexorable rule that anticipatory bail cannot be granted unless the proposed accusation appears to be actuated by mala fides; that anticipatory bail must be granted if there is no fear that the applicant will abscond. There are several other considerations, too numerous to enumerate, the combined effect of which must weigh with the court while granting or rejecting anticipatory bail. The nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the applicant's presence not being secured at the trial, a reasonable apprehension that witnesses will be tampered with and "the larger interests of the public or the state" are some of the considerations which the court has to keep in mind while deciding an application for anticipatory bail. Therefore, anticipatory bail can be granted even

⁵ AIR 1980 SC 1632

in serious cases like economic offences and States should have no concern for grant or refusal of grant of anticipatory bail, as there can be no presumption that the wealthy and the mighty will submit themselves to trial and that the humble and the poor will run away from the course of justice, any more than there can be a presumption that the former are not likely to commit a crime and the latter are more likely to commit it. Therefore, while dealing with the application for grant of pre-arrest bail or anticipatory bail, the Court must take into consideration the guidelines issued in “**Gurbaksh Singh Sibbia v. State of Punjab**” (referred supra).

For granting pre-arrest bail under Section 438 of Cr.P.C. the Apex Court laid down 10 guidelines in “**Siddharam Satlingappa Mhetre v State Of Maharashtra**”⁶ which are as follows:

- 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 fact 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 accused'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 cases 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 cases in which accused is implicated with the help of Sections 34 and 149 of the Indian Penal Code, 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

⁶ AIR 2011 SC 312

prevention of harassment, humiliation and unjustified detention of the accused;

ix. The court to consider reasonable apprehension of tampering of the witness 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.

In view of the law declared by the Apex Court, when the Court concluded that there is *prima facie* material against the petitioners that they committed offences, the Court can not grant pre-arrest bail.

In the present facts of the case, as discussed above, the investigation is not completed in view of non-cooperation of petitioners though notice under Section 41-A of Cr.P.C. was received, that apart there is *prima-facie* material to conclude that these petitioners committed the offence punishable under Section 3 (1) (r) (s) of the S.Cs. and S.Ts. (POA) Act. Therefore, I find no ground to enlarge the petitioners on pre-arrest bail at this stage.

In the result, the criminal petition is dismissed. No costs

The miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

25.04.2017
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