

HONOURABLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.17199 OF 2016

ORDER:

This Criminal Petition is filed under Sections 438 of Cr.P.C. to enlarge the petitioner on bail in Crime No.94 of 2016 of Chennur Police Station, Chennur, Y.S.R. District, registered for the alleged offences punishable under Sections 448, 354, 382 and 506 read with 34 of I.P.C. apprehending his arrest.

Petitioner herein is A.1 herein.

The case of the prosecution, in brief, is as follows.

The defacto complainant by name B.Savitri Reddy who is the wife of petitioner and daughter-in-law of A.2 and A.3 making serious allegations against petitioner and others, lodged a complaint dated 5-9-2016. There are several cases pending between the petitioner and his wife for the last three years due to which, they are living separately. While so, on 26-8-2016 at about 10.30 A.M., A.1 and A.2 went to her house along with one stranger and the stranger snatched her cell phone. In the meanwhile, A.2 and A.3 and another entered into her house highhandedly stating that petitioner deputed them to put an end to her life. A.2 caught hold of her tuft, dragged her and kicked her and snatched gold chain. A.4 tried to kill her by holding her throat. Thereafter, A.2 to A.4 have taken away the Rice cooker, Mixer, Gas Stove, chairs, television, Inverter and Fridge. Thereafter, A.2 had taken away two tulas of gold chain and Rs.10,500/- in cash and went away. Basing on the complaint given

by her, police registered the same as a case in the above crime for the offences punishable under sections referred supra and proceeded with investigation in the above crime. Petitioner and A.4 were constrained to file Crl.M.P.No.1631 of 2016 on the file of VI Additional Sessions Judge, Kadapa to grant anticipatory bail. The said Sessions Court granted anticipatory bail on 5-10-2016 to A.2 to A.4 and dismissed the said petition. She filed a complaint against the petitioner and his family members alleging that they subjected her to cruelty for want of additional dowry and basing on the same, a crime was registered in Crime No168 of 2013 and after investigation, police filed charge sheet before Special Mobile Court, Kadapa and the said court took cognizance and numbered it as C.C.No.257 of 2014 and the same is pending adjudication.

While things stood thus, the defacto complainant along with her hench men has entered into the petitioners house and necked out the petitioner and his family members from the house and occupied the same and since then, she is residing therein. Thereafter, defacto complainant also filed D.VC.No.7 of 2015 on the file of I Additional Judicial Magistrate of First Class, Kadapa seeking various reliefs and the same is pending adjudication and also filed F.C.O.PNo.5 of 2014 on the file of Family Court, Kadapa and the same is pending adjudication.

There are cases pending between the petitioner and his wife referred above. It is brought to the notice of this court that in D.V.C.

case, the court permitted her to stay in the house but while she was staying in the house, the said incident took place.

This court directed the learned Public Prosecutor to verify location of cell phone number of the petitioner. Today, the learned Public Prosecutor has produced call data pertaining to the defacto complainant and A.2 without producing the location of cell phone of the defacto complainant and also details of call data of A.2. Taking advantage of this, learned counsel for the petitioner contended that when a specific direction is issued to the Public Prosecutor to produce the details of location of cell phone, he failed to produce the same. Moreover, there is no material to show that the person who is not known to the defacto complainant. did not snatch mobile phone from the possession of the defacto complainant and it is sufficient to prima facie conclude that the petitioner did commit no offences.

In view of the disputes referred supra, there is every possibility of either committing such offence or to foist false case against the petitioner but that by itself is not a ground to conclude that petitioner did commit no offence. So far investigating agency examined seven witnesses out of them, L.W.2 who is the brother of A.2, specifically stated before the police that incident took place only at the instance of petitioner and he is the person who sent all these persons to commit such an offence. Therefore, statement of brother of A.2 and statement of junior paternal uncle of petitioner who is closely related to petitioner, itself goes against the contention of the

petitioner and apart from that, the investigation is not yet completed and it is in the mid way.

Therefore, it is difficult for me to conclude that that there is prima facie case against the petitioner that he did commit the offences referred supra.

Merely because, the learned Public Prosecutor did not produce the call data, as directed by this court, the petitioner is not entitled to claim pre-arrest bail automatically and it is for him to show that the petitioner did not commit such offences by producing the material before this court. In this view of the matter, granting of pre-arrest bail is not a matter of course, it is a matter of discretion.

The apex Court only reiterated the 10 guidelines laid down in *SIDDHARAM SATLINGAPPA MHETRE VS STATE OF MAHARASHTRA* (¹) 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.*

¹ AIR 2011 SC 312

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 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.

Apart from that, in view of the guidelines laid down by the apex court in another decision reported in [LAVESH VS. STATE \(NCT](#)

OF DELHI) ² .the apex court held that court has to take all the circumstances in a petition under section 438 and conduct of the accused to be taken into consideration while considering the main application for grant of pre-arrest bail.

In the present case, other accused persons are family members and they are parents and maternal uncle of the petitioner herein and another, the present allegations made against this petitioner and other accused are serious in nature allegedly committed such offence on account of pendency of both civil and criminal cases in different courts i.e., D.V.C. etc., which are at the instance of the defacto complainant. Hence, it is not appropriate to consider the request of the petitioner for pre-arrest bail and consequently, I find no ground to grant pre-arrest bail at this stage and the same is liable to be dismissed.

In the result, this Criminal Petition is dismissed.

As a sequel to the disposal of this petition, the Miscellaneous Petitions, if any, pending, shall stand dismissed.

JUSTICE M.SATYANARAYANA MURTHY

Dated 31-1-2017.

Dvs.

² (2012) 8 SCC 730

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Dvs