

HONOURABLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.16829 OF 2016

ORDER:

This Criminal Petition is filed by the petitioner under Section 438 of Cr.P.C. to enlarge him on bail in the event of his arrest in Crime No.18 of 2016 of C.I.D., C.C.S. Police Station, Hyderabad, registered for the alleged offences punishable under Sections 420, 406, 408 read with 120-B and Section 8 of A.P. Public Examinations (Prevention of Malpractices and Unfair means) Act, 1997, apprehending his arrest.

Petitioner herein is A.46 in the above crime.

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

The petitioner is allegedly indulged in leaking TS EAMCET-II 2016 Examinations in collusion with parents of the students, coaching centres and staff of the JNTUH and printing press people to enable some of the students to have illegal merit/Rank in the above examination and that he took all the students to a particular place and arranged question bank to them so as to enable them to prepare, after collection of huge amount ranging from Rs.30,00,000/- to Rs.35,00,000/- for securing illegal rank in the examination.

The contention of the petitioner is that when the petitioner is no way connected with the alleged offences and that there is no material against him to rope with any of the offences and that he is nothing to do with the alleged offences punishable under Sections referred above but he is apprehending his arrest in connection the

above referred offences and prayed this court to grant pre-arrest bail to him.

During hearing, the learned counsel for the petitioner produced several papers to show that the petitioner has nothing to do with the offences and he was engaged in marriage function at the time of alleged offences and that there is nothing to point out his complicity for the above offences and prayed this court to enlarge him on bail in the event of his arrest.

Whereas the learned Public Prosecutor for the State of Telangana would contend that during investigation, police recorded statements of witnesses under Section 161 (3) of Cr.P.C. particularly, parents of the students and students spoke about the collection of huge amount ranging from Rs.30,00,000/- to Rs.35,00,000/- and arranging papers of TS EAMCET-II 2016 Examinations and their statements clearly disclose that the petitioner directly indulged in the commission of such offences and arranging such classes to the students to secure wrong eligibility and to secure seats in examination who are supposed to deal with the life would have its own impact on the public at large depriving the meritorious of the students and he produced various call data of the petitioner which shows that the petitioner had contacted with several persons on different dates and therefore, there is material pointing out the complicity of the petitioner in the above crime and prayed this court to dismiss the petition.

The first and foremost contention of the petitioner is that the petitioner is nothing to do with the offences and he was engaged in sister's marriage function at Patna, Bihar State. In support of his contention, he produced certain documents and the Marriage Certificate dated 17-7-2016 and whereas the offences allegedly committed on 9-7-2016 and therefore, his presence at the time of alleged commission of offences can be excluded and he also produced marriage invitation and "NIKA NAMA" both in Urdu language and translated copy along with office copy.

At best, the marriage of his sister was performed on 17-7-2016 at about 10 A.M., which is a Sunday whereas the offence took place allegedly on 9-7-2016. Therefore, basing on the alleged "NIKA NAMA" i.e. Marriage Registration Certificate and Wedding Card etc., are of no assistance to the petitioner to eliminate his participation in the offence on 9-7-2016. Hence, on this ground, the petitioner cannot be enlarged on bail in the event of his arrest.

The other contention of the petitioner is that the petitioner got issued a legal notice to the parents and they are threatening to arrest the petitioner despite order but this is only during pendency of the petition before the court and consequently, it is of no use to prove that students have no connection.

Curiously, learned Public Prosecutor for the State of Telangana produced a copy of statements recorded by the Investigating Agency during investigation under Section 161 (3) Cr.P.C. the statements of Kumbam Thirupathi Reddy, Enaganti Shankar Reddy and Vallapuri

Laxman Rao were recorded on 16-11-2016 and they would show that their children along with some other students and their parents went to Bhuvaneshwar where they met one Narayana Rao and later proceeded to a Hotel and stayed upto 7-7-2016 at 1400 hours where one Agarwal came to hotel, took the students to unknown place where they provided question papers (bank) and asked them to prepare themselves for examination furnishing question papers and collected Rs.35,00,000/- from them.

Police also recorded the statement of Vallapuri Laxman Rao which is in the same lines of Shankar Reddy and others and one Unnam Satyam, one Rayachuri Ganesh Prasadh, one Rayachuri Shoban Prasad and one Asif Khalil. In the statement of Vallapuri Laxman Rao, he clearly stated as follows:

“On that day evening one agent of Agarwal @ Tauqeer came to the lodge and he shifted my son and Pavan Kumar son of Unnam Satyam and Charansai, son of Shoban Prasad to some other unknown place for giving practice classes with leaked question papers and brought them back to the lodge in the early morning on 8-7-2016. On 8-7-2016, we all returned to Hyderabad by INDIGO flight. My son told me that the agents of Agarwal took them to a secret place of Cuttack and made them to practice 2 sets of leaked question papers of Telangana EAMCET-II (Medical) exam.”

Similarly, Unnam Satyam spoke about the collection of Rs.30,00,000/- per student and informed to handover blank cheques to attend classes. On demand of Agarwal @ Tauqeer, he paid Rs.3,00,000/-tohim prior to going to Bhuvaneshwar. He further stated that an agent of Agarwal came to the lodge and shifted his son

and sons of Laxman Rao and Shoban Prasad to some unknown place for giving practice classes with leaked question papers of TS EAMCET-II (Medical) Entrance Examination-2016 and they were brought back to lodge along with the said agent and then the agent demanded him to handover original study certificates to his son and also blank cheques but he refused to give the same to him. On that some altercation took place between them. Later, they returned to Hyderabad from Bhubaneswar.

One Rayachuri Ganesh Prasad also stated in the same lines of Unnam Satyam.

Investigating Agency collected information. Moreover, the call data produced before this court as directed by this court would show that person holding cell phone No.9523945437 contacted Sivanarayana 18-30 hours on 6-7-2016 and G.Prasad on the same day at 21.13 and also contacted with Ganesh Prasad on 7th, 8th and 9th July, 2016. The information further disclosed that he had contacted Shivanarayana on 9th July, 2016 and Ambaniswar on 9th July, 2016 at different points of time and likewise there are many details regarding contacting several persons who are examined by the Investigating Agency.

This material would show that the said person had contacted various persons including the persons whom investigating agency examined during investigation.

The serious allegations made against the petitioner is that leaking of TS EAMCET-II (Medical) Entrance Examination-2016

enabled some of the average students to secure higher rank and collected huge amount of Rs.30,00,000/- to Rs.35,00,000/- and he also involved in a case in C.C.No.192 of 2010 prior to this incident and the said case was ended in acquittal.

Therefore, the petitioner is in the habit of the leaking the papers of examinations colluding with others but ultimately he was acquitted in the earlier case referred above and therefore, it is difficult to accept the contention at this stage and the petitioner is an innocent for offences prima facie. On the other hand, leaking of said examination papers enabling the students to secure a seat in examination would have its impact on society at large since they are dealing human lives and in such a case, the offences allegedly committed by the petitioner cannot be lightly viewed.

The petitioner is apprehending his arrest in connection with the above crime and sought for a pre-arrest bail. Grant of pre-arrest bail is not a matter of course and it is a matter of exception as per the decision of the apex court reported in *STATE OF MAHARASHTRA VS. MOHD. SAJID HUSAIN* (¹). 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*

¹ AIR 2008 SC 155

4.The possibility of the appellant, if granted anticipatory bail, fleeing from justice.

In *SIDDHARAM SATLINGAPPA MHETRE vs. STATE OF MAHARASHTRA AND OTHERS* ⁽²⁾, the Apex Court held 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 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;*

² 2011 CrI.L.J. 3905

- (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 principles laid down in the above judgments, granting of pre-arrest bail is not a matter of course, unless court satisfied that the petitioner did commit no offence prima facie and had no connection with the offence. Committing of offences punishable under sections referred supra will have its own impact on the society at large, that apart, he underwent trial in a similar case in C.C. referred supra .

Therefore, considering the facts and circumstances of the case, it is difficult to grant pre-arrest bail at this stage. More so, there is every possibility to commit similar offences in future in the event of enlarging the petitioner on pre-arrest bail and that apart, the person is belonging to Patna running Biryani point and in such a case, he may indulge in similar offences in future.

Taking into consideration of the facts and circumstances of the case and material on record, I find no ground to enlarge the petitioner on pre-arrest bail in connection the offences punishable under sections referred supra and as such, this petition is liable to be dismissed.

Accordingly, this Criminal Petition is liable to be dismissed.

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

JUSTICE M.SATYANARAYANA MURTHY

Dated 24-1-2017

Dvs.



HONOURABLE SRI JUSTICE M.SATYANARAYANA MURTHY



CRIMINAL PETITION No.16829 OF 2016

Dated 24-1-2017

Dvs