

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.2937 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.16 of 2017 on the file of Pakala Police Station, Chittoor District, registered for the offences punishable under Sections 353 and 506 read with 34 of Indian Penal Code (for short "I.P.C."), to direct the Station House Officer, Pakala Police Station, Chittoor District to release them on bail in the event of their arrest in connection with the above crime.

Sri M.Venkateswarlu, V.R.O., Upparapalli and others lodged a complaint with Inspector of Police, Pakala alleging that on 02.03.2017 at about 12.30 noon at the direction/order of the Mandal Tahsildar to resolve the pathway dispute on the application submitted by the villagers of Harijanawada, Upparapalli Village addressing the M.R.O, to decide the dispute along with Village Revenue Officer, Mandal Surveyor, Mandal Revenue Inspector, Additional Revenue Inspector, L.C. Surveyor together went to the village and while trying to settle the dispute amicably, the persons who closed the pathway i.e. L.Rudhra Koti and his son L.Sudha @ Sudhakar – petitioners and their family members behaved high handedly and petitioner No.2 armed with sickle tried to hack the defacto complainant and abused the defacto complainant in filthy language and asked them to talk to their advocate and thereby obstructed the petitioners from discharging their duties. It is also alleged that these petitioners assaulted the defacto complainant with sickle when he went to the

disputed place to convince both the parties regarding pathway dispute. Thus, the defacto complainant and others are public servants as defined under Section of 21 I.P.C. and they were obstructed from discharging their duties by the petitioners. On the strength of the above complaint, the police registered the crime and issued F.I.R.

It is the contention of the petitioners that they are innocent of any offence and there are civil disputes pending between the parties and the petitioner No.1 filed a suit O.S.No.7 of 2017 on the file of Junior Civil Judge, Pakala against M.Gangulaiah and 2 others for grant of perpetual injunction and also filed interlocutory application therein for grant of temporary injunction, but the Court ordered notice. Therefore, the question of settlement of dispute by these petitioners would not arise and that apart the complaint lodged by the petitioners against M.Gangulaiah, defendant in O.S.No.7 of 2017, but no action was taken till today. Smt.R.Baby, wife of petitioner No.1, also filed a private complaint against Rishi Varma and 3 others, complainants herein, which is numbered as C.F.No.1018 of 2017 on the file of Judicial First Class Magistrate, Pakala for various offences and the same is pending. Therefore, the question of defacto complainants visiting the scene of offence as part of their duty and the alleged assault by the petitioners would not arise and it is the invention made by the defacto complainant and prayed to enlarge the petitioners on bail.

Learned Public Prosecutor for the State of Andhra Pradesh opposed the petition on the ground that the C.D. produced before the Court disclosed as to how the petitioners obstructed the

defacto complainants from discharging their duties and the investigation is not completed.

As seen from the material on record, there were disputes between the petitioners and M.Gangulaiah and others with regard to passage and no interlocutory order was passed by the Court in the suit filed by the petitioners, on the other hand notice was ordered. Therefore, no judicial order was in force on the date of alleged incident. However, on verification of C.D. produced before this Court, it shows that the defacto complainants visited the scene of offence, then the petitioners and their family members, who were sitting near a tree obstructing the defacto complainants from discharging their duties and did not allow them to enter into the site by placing thorny bushes. Thus, the defacto complainants were obstructed from discharging their duties being public servants and it would attract the offence punishable under Sections 353 and 506 of I.P.C. as the petitioner No.2 assaulted the defacto complaints with sickle.

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. 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**¹” 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

¹ AIR 1980 SC 1632

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 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**²” 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 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

² AIR 2011 SC 312

petitioners to conclude that they committed offences, the Court can not grant pre-arrest bail.

I find *prima facie* material to conclude that these petitioners committed the offences punishable under Sections 353 and 506 of I.P.C. and the investigation is still in progress. Therefore, I find that it is not a fit case to enlarge the petitioners on pre-arrest bail. Consequently, the petition is liable to be dismissed.

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

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

25.04.2017
Ksp



JUSTICE M. SATYANARAYANA MURTHY