

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.2501 of 2017

ORDER:

This Criminal Petition under Sections 438 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'), is filed to enlarge the petitioner/A-3 on pre-arrest bail since he is apprehending arrest in connection with Crime No.605 of 2016 of Police Station, Pet Basheerabad, registered for the offence punishable under Section 307 r/w 34 of IPC and Section 25 (1B) of Arms Act.

2. The case of the prosecution is that a complaint was lodged by Mandadi Malla Reddy dated 17.11.2016 at about 0015 hours with the Station House Officer, Police Station, Pet Basheerabad stating that his son Mandadi Nagender Reddy and one Chakravarthi are carrying on real estate business and recently they separated from business due to some differences and on 16.11.2016 at about 2200 hours while his son and daughter-in-law are returning to house, the accused Prabhu who was sent by Chakravarthi attacked him with firearm with an intention to kill him due to business rivalry and he sustained bleeding injury on his back, he was shifted to hospital for treatment.

3. Initially, crime was registered against two persons as A-1 and A-2. But, A-3 was arrayed as an accused in view of the confession made by A-1 and the role played by A-3, the petitioner herein is as under:

“Accordingly, on 15.11.2016 A-2 & A-3 advised A-1 to eliminate the injured and advised A-3 to escape from the eyes of police. As per their plan, on 16.11.2016 at about 2200 hours A-1 went to the house of injured knowingly well that the injured returned to home at about 2200 hours along with his wife. While the injured entering inside his house main gate, A-1 called the injured standing behind him. On turning the injured, A-1 pointed the pistol on his forehead and at the same time, the injured tried to escape, but A-1 fired with the pistol having at his hand which pierced into the back of injured. A-1 again tried to fire, but, the second cartridge got misfired. On hearing the blasting sound the eyewitness Sri Narasimha Rao @Nani rushed to the house of injured. In the meantime, the complainant along with his wife and daughter-in-law came down and found the injured caught A-1 with the help of eyewitness Sri Narasimha Rao @Nani. At the same time, the colony residents beat him in black and blue and caused him injuries and handed him over to police. Thereafter, the complainant with the help of his brother shifted the injured to Balaji Hospital for necessary treatment and thereby A-1 to A-3 found committed the offence under Section 307 r/w 34 IPC and Section 25(1)(b) and 27 Arms Act.”

4. Thus, the role played by A-3, the petitioner herein is that he advised A-1 to flee away with fire-arm to avoid arrest by the police and that he also shared the intention to kill the son of the de facto complainant.

5. The contention of the learned counsel for the petitioner is that earlier the petitioner filed three bail applications before the Sessions

Court under Section 438 Cr.P.C. and finally the third application was dismissed on the ground that though A-1 and A-2 were enlarged on regular bail, the allegations made against this petitioner were serious in nature for the offences punishable under Section 307 r/w 34 of IPC and Section 25 (1B) of Arms Act and that the investigation is still in progress and declined to grant bail.

6. No doubt, A-1 and A-2 were already enlarged on regular bail on their arrest. But, the principle regarding grant of regular bail is totally different to the principles for grant of pre-arrest bail.

7. Grant of pre-arrest bail is not a matter of course, it is a matter of exception. Unless some exceptional circumstances are shown, the petitioner cannot be enlarged on pre-arrest bail. But, here no such exceptional circumstances are brought on record. However, the scope of Section 438 Cr.P.C. is well considered by the Apex Court in the Constitutional Bench In *Gurbaksh Singh Sibbia v. State of Punjab*¹.

In *Gurbaksh Singh Sibbia v. State of Punjab*, the Constitutional Bench held that 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

¹ AIR 1980 SC 1632

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 consideration 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).

8. 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;

² AIR 2011 SC 312

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.

9. In view of the guidelines laid down by the Apex Court, the gravity of the offences, the antecedents of the applicant, possibility of the applicant to flee from justice and the possibility of the accused to repeat similar offences and interfering with the investigation, impact on society are the main consideration and on 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 and the Court has to consider reasonable apprehension of tampering of the witnesses or apprehension of threat to the complainant.

10. Therefore, this Court is required to consider the gravity and seriousness of the offences, the chances of interference with further investigation, influencing and threatening the witnesses and at the most, the court has to record its satisfaction that there is no prima facie material against the petitioner to conclude that the petitioner did commit an attempt to murder.

11. But, in this case, the investigation is still in progress and the petitioner was successfully avoiding his arrest by the police during

the investigation. In such a case, taking into consideration the gravity of offence, by applying the principles laid down in the above judgment, it is difficult for me to conclude prima facie that the petitioner did commit an attempt to murder. Consequently, the petition deserves to be dismissed.

12. In the result, this Criminal Petition is dismissed.

As a sequel to it, miscellaneous petitions, if any pending in this case, shall stand closed.

M. SATYANARAYANA MURTHY, J

Date:31.03.2017
ccm



THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY



CRIMINAL PETITION No.2501 of 2017

Date:31.03.2017

ccm