

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRL.P.No.1364 OF 2017

ORDER:

This criminal petition is filed under Section 438 of Cr.P.C to enlarge the petitioner/A17-Assu @ Mohd.Ashraf Ali @ Ashraf Ali on bail in the event of his arrest in connection with Crime No.265 of 2016 of Nalgonda II Town Police Station, registered for the offences punishable under Section 384 read with Section 34 of IPC and Section 25(ia) and 25(1B) of the Arms Act and Section 5 of the Explosive Substance Act.

2. The petitioner allegedly along with others formed into a gang and settling land disputes within the neighbouring areas of Nalgonda and they are collecting huge amount being share of Nayeem, who is a notorious gangster indulged in similar acts being gang leader, holding panchayats and collecting huge amounts from different persons and similarly in the month of February, 2016 as per the directions of Nayeem they held land panchayat in Sivajinagar area and at the outskirts of Panagal Village of Nalgonda town for settling land disputes in Survey Nos.1349, 1350, 1233 and 1362 of Panagal Village and Survey Nos.1254 and 1255 of Sivajinagar and other areas. The basis for registering the crime against this petitioner is confessional statement of co-accused- Cheruku Vijay and Thonta Ashok.

3. The main contention of the learned counsel for the petitioner is that there is absolutely no material against the petitioner and the confessional statement of co-accused is not admissible in evidence and that on the strength of such confession, the petitioner cannot

be roped with such serious offences and that the other accused were enlarged on regular bail and two were enlarged on pre-arrest bail. Therefore, the petitioner can be enlarged on bail.

4. Whereas, learned Additional Public Prosecutor contended that this petitioner is also one of the member of the gang, who collected huge amount in the name of Nayeem gang being his heir utilising his name and subsequently, there is Crime No.243 of 2016 of I Town Police Station Nalgonda. Therefore, he cannot be enlarged on bail as there is every possibility of interfering with the further investigation and commit similar offence while on bail.

5. Learned Additional Public Prosecutor also contended that the investigation is still in progress and the investigating agency has to examine some material witnesses to find out the truth in the allegations made against the petitioner and by the co-accused.

6. No doubt the basis for registering the crime against this petitioner is confessional statement of the co-accused. But such evidentiary value can be considered during trial and in that view of the matter the offences allegedly committed by the petitioner are serious offences i.e., forming a gang and collecting huge amounts in the name of Nayeem Gang, who died recently and who is a well known notorious gangster within the Districts of Telangana and collection of huge amounts holding firearms etc., is a serious offence against the society at large. When the petitioner is a member of such gang, this Court cannot exercise discretion to grant pre-arrest bail to the petitioner since granting pre-arrest bail is purely a discretion of the Court unless there are certain exceptional circumstances.

7. Here, the only circumstance shown to the Court is that there is no material except the confessional statement of co-accused i.e. two persons by name Cheruku Vijay and Thonta Ashok.

8. 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**”, 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" but 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 consideration for grant or refusal 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** (supra).

9. 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**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.
- 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

¹ AIR 2011 SC 312

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.

10. Thus, in view of the law declared by the Apex Court referred supra, the main consideration is that the Court has to conclude that the petitioner *prima facie* did commit any offence and the second consideration that he will not interfere with the further investigation and will not flee from justice. But, here, the petitioner is an accused in the other crime i.e. Crime No.245 of 2016, which is identical to this case and that apart the investigation is not yet completed and thereby at this stage, it is difficult to exercise discretion to grant pre-arrest bail, as there is every possibility to interfere, threaten the witnesses being a member of a gang known as 'Nayeen Gang'.

11. One of the contentions of the learned counsel for the petitioner is that the other accused are already enlarged on bail and two accused granted pre-arrest bail and that A6 was enlarged on bail in CrI.M.P.No.63 of 2017 by the I Additional District Judge, Nalgonda is bereft of any reasons, but I do not like to comment anything on the said order as this Court is not sitting over an appeal against the order passed by the Sessions Judge while exercising jurisdiction under Section 438 of Cr.P.C. Therefore, based on such order, the petitioner cannot be enlarged on bail at this stage as there is every possibility of the petitioner interfering with

the further investigation and as such there are no grounds to grant pre-arrest bail to the petitioner.

12. The Criminal Petition is accordingly, dismissed.

Pending miscellaneous petitions in the petition, if any, shall stand closed.

M.SATYANARAYANA MURTHY,J

28.02.2017
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