

HONOURABLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.355 OF 2017

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.888 of 2016 of Vanasthalipuram Police Station, Cyberabad, registered for the alleged offences punishable under Sections 343, 384, 506 and 323 of I.P.C.

Petitioner herein is A.3 in the above crime.

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

On 23-1-2016 at 4.00 P.M., the defacto complainant lodged a report before Vanasthalipuram Police Station alleging that while he is running Business Process Outsourcing Consultancy (BPO) and doing small project works, the petitioner and others came in contact with him and invited him to investment, as they have web-development company. The defacto complainant contacted the petitioner, who invested Rs.10,00,000/- with conditions that he would pay @ Rs.4,00,000/- per month for a period of 11 months. On confirming the same, the defacto complainant entered into an agreement dated 2-5-2016. Later one Benson Suresh stated that they started business. Five months thereafter the defacto complainant came to know that the said company is a bogus one and demanded to return funds. But the petitioner colluding with other accused wrongfully confined the defacto complainant for more than three days and extracted money by beating him, and apart from that, they

took signatures on blank papers and threatened him with dire consequences. Basing on the report presented by the defacto complainant, a case in Crime No.888 of 2016 for the offences punishable under the above referred sections, was registered.

Heard the learned counsel for the petitioner and the learned Public Prosecutor for the State of Telangana.

It is the case of the petitioner that he invested the amount with the defacto complainant who has undertaken to return the amount @ Rs.4,00,000/- for a period of eleven months, but he did not return the amount.

The allegation that they subjected him to cruelty by beating him physically and mentally is false since he is not the person who allegedly kidnapped the defacto complainant and that too, there is an abnormal delay in lodging the complaint and no injuries were found on the body of the petitioner. Therefore, basing on this confession, he argued that the petitioner is falsely implicated in the above crime and prayed to enlarge him the petitioner on bail in the event of his arrest.

The learned Public Prosecutor for the State of Telangana would contend that though the other accused kidnapped him, he was taken to Bihar to the place of the petitioner where the petitioner subjected him to cruelty both physically and mentally and collected huge amount of Rs.40,00,000/- through his mother and even now since the petitioner is threatening the defacto complainant to foist false

cases against him, it is not a fit case to enlarge the petitioner on bail and prayed to dismiss the petition.

As seen from the long narrated complaint, the incident is regarding investment in the bogus company at the instance of one Harish and Suresh who are other accused in this crime and the defacto complainant and petitioner also invested certain amount in the company as they agreed to pay Rs.4,00,000/- per month for a period of eleven months and later did not pay and thereupon, the petitioner and other accused allegedly colluded with the petitioner, kidnapped him and collected huge amount of Rs.40,00,000/-.

The contention of the petitioner is that there is abnormal delay in lodging the complaint as if the allegations made in the complaint even discloses as to how long he was confined at Bihar and took his Shift car and obtained signatures on documents and he was allowed to move from Bihar only after collecting the amount of Rs.40,00,000/- allegedly, still there is delay but that by itself is not a ground to grant pre-arrest bail at this stage, the material on record prima facie shows that the petitioner committed the offence in collusion with Suresh and Harish who are other accused in the present crime.

Grant of pre-arrest bail is not a matter of course, it is a matter of exception. Unless the petitioners have shown exceptional circumstances, the court cannot grant pre-arrest bail and such discretion is only in exceptional circumstances as per the law declared by the Apex Court in *STATE OF MAHARASHTRA VS.*

*MOHD. SAJID HUSAIN* (<sup>1</sup>). 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*
- 4.The possibility of the appellant, if granted anticipatory bail, fleeing from justice.*

Similarly, in *SIDDHARAM SATLINGAPPA MHETRE VS. STATE OF MAHARASHTRA AND OTHERS* (<sup>2</sup>), 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;*

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<sup>1</sup> AIR 2008 SC 155

<sup>2</sup> 2011 Crl.L.J. 3905

- 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;*
- (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.*

Here, the petitioner is resident of Bihar and defacto complainant was subjected to cruelty at Bihar alone.

Therefore, I find prima facie material against the petitioner to conclude that he committed such serious offence with the collusion of other accused, at the same time, it is difficult to secure the presence of the petitioner during trial as he belongs to Bihar and the manner in which the offence allegedly committed by the petitioner

itself shows that the petitioner and other accused committed such serious offence.

Therefore, taking into consideration of the facts and circumstances of the case and by applying the principles laid down in *STATE OF MAHARASHTRA vs. MOHD. SAJID HUSAIN* and also *SIDDHARAM SATLINGAPPA MHETRE VS. STATE OF MAHARASHTRA AND OTHERS* (1<sup>st</sup> and 2<sup>nd</sup> cited), I find no ground to enlarge the petitioner on pre-arrest bail.

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.



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JUSTICE M.SATYANARAYANA MURTHY

Dated 30-1-2017

Dvs.

HONOURABLE SRI JUSTICE M.SATYANARAYANA MURTHY



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Dated 30-1-2017

Dvs