

THE HON'BLE SRI JUSTICE G.SHYAM PRASAD

CRIMINAL PETITION No.253 OF 2017

ORDER:

This petition is filed under Section 438 of Criminal Procedure Code, for grant of anticipatory bail. The petitioner, is accused No.10 in Crime No.202 of 2016 of Police Station, Asif Nagar, Hyderabad.

2. The petitioner is alleged to have committed the offences under Sections 420,468,471,506 r/w Section 34 of IPC, along with other accused in the above crime.

3. Heard the arguments of both sides.

4. Learned counsel for the petitioner submits that the name of the accused does not find place either in the F.I.R. or in the complaint. There are no allegations against him in these documents that the petitioner is falsely implicated in this case. It is further contended that the investigation has been completed and that the dispute in this case is of purely civil in nature. It is further submitted that the police did not serve notice under Section 41-A of Criminal Procedure Code to him. It is submitted that the petitioner has filed a surrender petition before the learned 6th Additional Chief Metropolitan Magistrate, under Section 437 (I) Cr.P.C. and the learned judge has dismissed his surrender petition as not maintainable, as his name does not find place, either in the FIR or in the complaint. Since the petitioner is apprehending arrest, he sought for grant of anticipatory bail.

5. The learned Public Prosecutor opposed contending that he got information that the petitioner is threatening the witnesses. It is also submitted that the confession of A-2 reveals the role of petitioner in the commission of the offence. It is also submitted that he has received information that the petitioner is not cooperating with the investigation. On these grounds sought for dismissal of this petition.

6. At the outset, the case of the petitioner is that he is anticipating arrest by the police in the above crime. He pleads innocence of the offences alleged against him.

7. The learned counsel for the petitioner contends that the name of the petitioner does not find place either in the FIR or in the complaint.

8. As a matter of fact, the first information report is not an encyclopedia. It does not contain all the names of the accused. The non-mention of the name of the petitioner in the first information report does not absolve the involvement of the petitioner in the crime. During the investigation, some material was found by the investigating agency against the petitioner in the confession of A-2, and therefore, his name was appearing in the remand report.

9. The other contention is that the petitioner was not given notice contemplated under Section 41 (I) of the Criminal Procedure Code. Except making allegation against the police, no material has been brought on record to prove that fact.

10. The other contention is that the judge has dismissed the surrender petition of the petitioner, as his name does not find place either in the FIR or in the complaint. In fact, the accused cannot file a petition for surrender when his name does not find place either in the FIR or in the complaint and therefore, the judge has rightly dismissed the surrender petition filed by the petitioner.

11. In view of the foregoing reasons and the submissions of the Public Prosecutor and since the investigation is in progress, the petitioner is not entitled for grant of anticipatory bail.

12. However, since some of the accused have already been enlarged on bail, the petitioner also may move an application now before the trial Court for his surrender and the learned Magistrate will consider his application of surrender and pass appropriate orders, in accordance with law. On such surrender, the learned Magistrate shall consider his application for grant of bail on merits.

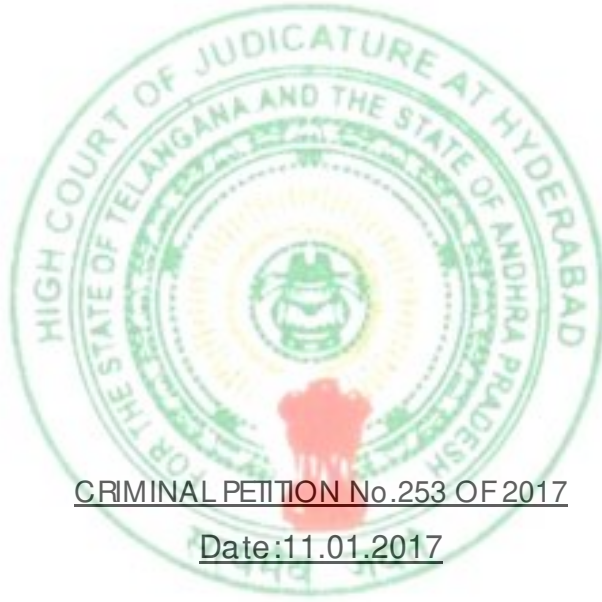
13. In view of the foregoing reasons and observations, this petition is liable to be dismissed.

14. In the result, the petition is dismissed. Miscellaneous Petitions, if any, pending in this Criminal Petition shall stand closed.

G.SHYAM PRASAD, J

Date: 11-01-2017
Hsd/ccm

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