

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.417 OF 2017

ORDER:

This petition is filed under Section 438 of Code of Criminal Procedure (for short "Cr.P.C.") to grant pre-arrest bail to the petitioner/accused No.3 in Crime No.215 of 2016 on the file of Alipiri Police Station, Tirupathi Urban, Chittoor District registered for the offence punishable under Section 370 (A) (2) of I.P.C. and Sections 3, 4 and 5 of Immoral Traffic (Prevention) Act.

The case of the prosecution is that on 13.10.2016 at about 10.30 p.m. on receipt of credible information about the organized prostitution in Room Nos.101, 102 and 103, Jai Matha Residency, Tirumala Bye Pass Road, Tirupathi, the Inspector of Police, Alipiri Police Station and his staff went there and found one female person and three male persons at the reception and on seeing the police officials, they skulked away and the police while conducting search of the lodge found one male person and a female person in room No.101 in a compromising position and thereafter on their search they found another male person and a female person in room No.102 in compromising position and thereafter the persons who were there in those rooms were gathered at the reception of the lodge and on interrogation accused Nos.1 and 2 alleged to have confessed before the police that they along with other accused organizing prostitution at the lodge and that accused Nos.4 to 7 are customers, who came for prostitution and a mediators report was drafted and on the strength of the same, a crime was registered.

The petitioner is the son of owner of the said lodge and the learned counsel for the petitioner is contended that he never indulged in any such activity and the lodged was leased out to one O.Krishna for a period of 11 months by executing a lease deed dated 10.11.2014, as such he is no way concerned with the said offence and produced a copy of the lease agreement between the petitioner's mother and O.Krishna. Therefore, he is not connected with the offence. He further contended that the petitioner is aged about 20 years, no intention can be attributed to him in letting the lodge. Therefore, he cannot be described as the person running brothel. It is also contended that the manner, in which the panchanama was drafted itself shows that the petitioner was falsely implicated in the said crime is improbable and prayed to enlarge the petitioner on bail in the event of his arrest.

Learned Public Prosecutor (State of Andhra Pradesh) drawn the attention of this Court to the confessional statement of other accused recorded by the police, it shows that the petitioner involved in immoral activities and running brothel by letting the lodge and sharing the income derived thereon, as such the petitioner cannot be enlarged on pre-arrest bail since such offence is against the society at large.

The petitioner, admittedly, is the son of the owner of the lodge, but letting the same to Sri O.Krishna under the lease deed is a question of fact, which cannot be decided at this stage since the lease deed is not a registered document and based on such unregistered lease deed, it is difficult to accept the contention of the petitioner that he did commit no offence. The age is not the criteria to commit such offence and when the statement of the

girls, who engaged in prostitution, recorded by the police shows that this man is also sharing income derived in such business of prostitution by letting out rooms.

In an application for grant of pre-arrest bail in a serious offence punishable under Immoral Traffic (prevention) Act, the statement of girl, who is doing prostitution, has to be taken into consideration and if such statement disclosed about the role of owner of the building, the bail can be rejected.

Thus, there is direct material in view of the statement of the girl, who is doing prostitution, against the petitioner regarding his involvement in the offence punishable under Section 370 (A) (2) of I.P.C. Section 370 (2) of I.P.C. says that whoever commits the offence of trafficking shall be punished with rigorous imprisonment for a term which shall not be less than 7 years, but which may extend to 10 years, and shall also be liable to fine.

The offence committed by the petitioner by letting out rooms in Jai Matha Residency, Tirumala would clearly fall within the ambit of Section 370 (2) of I.P.C. Therefore, I find that the petitioner deserves no sympathy either because of his age or the alleged letting out rooms in the lodge as the offence allegedly committed by the petitioner is against the society at large and it is an immoral act.

While dealing with a petition for grant of pre-arrest bail, the Apex Court formulated 10 guidelines in **Siddharam Satlingappa Mhetre vs 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;

¹ AIR 2011 SC 312

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.

Apart from the said guidelines, the Court has to strike balance between the fundamental right of liberty guaranteed under the Constitution of India and societal interest. Here, the offence allegedly committed by the petitioner is immoral act against the society. Therefore, I am not inclined to grant pre-arrest bail to the petitioner.

In the result, the petition is dismissed.

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

JUSTICE M. SATYANARAYANA MURTHY

27.01.2017

Ksp