

CRIMINAL PETITION NO.2194 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-2 on pre-arrest bail since she is apprehending arrest in connection with Crime No.26 of 2017 of Tanuku Town Police Station, West Godavari District, for the offences under Sections 498-A, 323, 506, r/w 34 of IPC, Sections 3 and 4 of Dowry Prohibition Act.

The case of the prosecution in brief is that the marriage of Sri Akkabatla Lakshmi Narayana was performed with the de facto complainant Akkabatla Surya Kumari on 17.04.2008 and at the time of marriage, the family members presented 12 sovereigns gold necklace, two rings, three pairs of ear rings, papidibottu, bondu, myatilu etc. The ornaments were mortgaged and some of them were sold to meet the expenditure for vices. Rs.2 lakhs was paid towards pasupu kumkuma to her and the said amount was invested in the coconut, coco business and gained income in the business and with the said income, he purchased house in MRC Colony, Pedaveri and let out on monthly rent of Rs.600/-.

The husband of the de facto complainant is addicted to vices like drinking and started suspecting her. She informed about the harassment to her mother-in-law Seethamaha Lakshmi and Venkayamma, grandmother of her husband, they supported him and tried to abuse her with the help of her husband. Later, they started harassing her to get Rs.2 lakhs from the parents as the house is offered for sale at cheaper rate and her mother-in-law used to threaten her stating that she would perform the marriage of his son again with another lady who would bring more dowry

and threatened to kill her by hanging and spread the rumour that she died for the sake of her mother.

While the matters stood thus, the de facto complainant was beaten and necked out from the house and thereafter, she was treated in the dispensary of an R.M.P. Doctor and that she served a mutton curry with pesticide and forced her to eat but due to smell, she did not eat the food served to her and the act of her mother-in-law is only with an intention to kill her. Finally on 23.01.2017 when the matter was placed before the elders, the petitioner and her husband demanded payment of Rs.50,000/- , otherwise they would not allow to lead marital life with the first accused.

The main contention of the petitioner is that the petitioner is the mother-in-law of the de facto complainant and the allegation made against her is that she would perform the marriage of her son with another woman who is ready to bring more amount. Therefore, such an act would not constitute an offence and major part of the investigation is completed. Therefore, the petitioner, sought for pre-arrest bail.

This is a case where the petitioner forced the de facto complainant to eat mutton curry administering pesticide so as to make her die forcibly. Such an incident would certainly amounts to cruelty and therefore, the petitioner being a lady, is not expected to attempt to kill the de facto complainant by administering a pesticide in the mutton curry, and therefore, she cannot be enlarged on pre-arrest bail.

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.

In *Shri Gurbaksh Singh Sibbia case and Ors. v. State of Punjab*<sup>1</sup>, discussed on the scope of granting anticipatory bail and in *Savitri Agarwal and ors v. State of Maharashtra*<sup>2</sup>, the Supreme Court laid that wide discretionary power conferred by the Legislature on the higher echelons in the criminal justice delivery system cannot be put in the form of straight-jacket rules for universal application as the question whether to grant bail or not depends for its answer upon a variety of circumstances, the cumulative effect of which must enter into the judicial verdict. A circumstance which in a given case, turns out to be conclusive, may or may not have any significance in another case. While cautioning against imposition of unnecessary restrictions on the scope of the Section, because, in its opinion, over generous infusion of constraints and conditions, which were not to be found in Section 438 of the Code, could make the provision constitutionally vulnerable, since the right of personal freedom, as enshrined in Article 21 of the Constitution, cannot be made to depend on compliance with unreasonable restrictions, the Constitution Bench laid down the following guidelines, which the Courts are required to keep in mind while dealing with an application for grant of anticipatory bail:

- i) Though the power conferred under Section 438 of the Code can be described as of an extraordinary character, but this does not justify the conclusion that the power must be exercised in exceptional cases only because it is of an extraordinary character. Nonetheless, the discretion under the Section has to be exercised with due care and circumspection depending on circumstances justifying its exercise.
- ii) Before power under Sub-section (1) of Section 438 of the Code is exercised, the Court must be satisfied that the applicant invoking the provision has reason to believe that he

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<sup>1</sup> AIR 1980 SC 1632

<sup>2</sup> AIR 2009 SC 3173

is likely to be arrested for a non-bailable offence and that belief must be founded on reasonable grounds. Mere "fear" is not belief, for which reason, it is not enough for the applicant to show that he has some sort of vague apprehension that some one is going to make an accusation against him, in pursuance of which he may be arrested. The grounds on which the belief of the applicant is based that he may be arrested for a non-bailable offence, must be capable of being examined by the Court objectively. Specific events and facts must be disclosed by the applicant in order to enable the Court to judge of the reasonableness of his belief, the existence of which is the *sine qua non* of the exercise of power conferred by the Section.

iii) The observations made in *Balchand Jain v. State of M.P.*<sup>3</sup> regarding the nature of the power conferred by Section 438 and regarding the question whether the conditions mentioned in Section 437 should be read into Section 438 cannot be treated as conclusive on the point. There is no warrant for reading into Section 438, the conditions subject to which bail can be granted under Section 437(1) of the Code and therefore, anticipatory bail cannot be refused in respect of offences like criminal breach of trust for the mere reason that the punishment provided for is imprisonment for life. Circumstances may broadly justify the grant of bail in such cases too, though of course, the Court is free to refuse anticipatory bail in any case if there is material before it justifying such refusal.

iv) No blanket order of bail should be passed and the Court which grants anticipatory bail must take care to specify the offence or the offences in respect of which alone the order will be effective. While granting relief under Section 438(1) of the Code, appropriate conditions can be imposed under Section 438(2) so as to ensure an uninterrupted investigation. One such condition can even be that in the event of the police making out a case of a likely discovery under Section 27 of the Evidence Act, the person released on bail shall be liable to be taken in police custody for facilitating the

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<sup>3</sup> (1976) 4 SCC 572



recovery. Otherwise, such an order can become a charter of lawlessness and a weapon to stifle prompt investigation into offences which could not possibly be predicated when the order was passed.

v) The filing of First Information Report (FIR) is not a condition precedent to the exercise of power under Section 438. The imminence of a likely arrest founded on a reasonable belief can be shown to exist even if an FIR is not yet filed.

vi) An anticipatory bail can be granted even after an FIR is filed so long as the applicant has not been arrested.

vii) The provisions of Section 438 cannot be invoked after the arrest of the accused. After arrest, the accused must seek his remedy under Section 437 or Section 439 of the Code, if he wants to be released on bail in respect of the offence or offences for which he is arrested.

viii) An interim bail order can be passed under Section 438 of the Code without notice to the Public Prosecutor but notice should be issued to the Public Prosecutor or to the Government advocate forthwith and the question of bail should be re-examined in the light of respective contentions of the parties. The ad-interim order too must conform to the requirements of the Section and suitable conditions should be imposed on the applicant even at that stage.

ix) Though it is not necessary that the operation of an order passed under Section 438(1) of the Code be limited in point of time but the Court may, if there are reasons for doing so, limit the operation of the order to a short period until after the filing of FIR in respect of the matter covered by the order. The applicant may, in such cases, be directed to obtain an order of bail under Section 437 or 439 of the Code within a reasonable short period after the filing of the FIR.

Here, except that the petitioner is a lady, no other exceptional circumstance is shown which she is entitled to claim pre-arrest bail.

Therefore, I find no ground to enlarge the petitioner on pre-arrest bail. The petition deserves to be dismissed.

In the result, this Criminal Petition is dismissed.

Miscellaneous petitions, if any, pending in this criminal petition, shall stand closed.

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JUSTICE M. SATYANARAYANA MURTHY

Date: 23.03.2017  
ccm



THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY



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