

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.2513 OF 2017

ORDER:

This criminal petition, under Section 438 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'), is filed by the petitioners/A.7 and A.8 seeking a direction to the Station House Officer, Bhimavaram II Town Police Station, West Godavari, to enlarge them on bail in the event of their arrest in connection with Crime No.49 of 2017 registered for the offences punishable under Sections 302 and 324 read with 34 of the Indian Penal Code, 1860 (for short 'I.P.C.'), apprehending their arrest.

The case of the prosecution, in brief, is that on 07.03.2017 at 7.00 p.m. father of the *de facto* complainant - Venkateswara Rao went outside from the house along with Shaik Ahmad Noor and in the midnight the said Noor informed the *de facto* complainant that when they are at Padmalaya theatre near to the Palla Yesu Babu's house, five unknown persons attacked his father - Venkateswara Rao with a knife and stones, and asked him to come immediately. Then the *de facto* complainant along with Chillamanthula Satyanarayana, Narusetti Sunil and Onguru Kumar went to the place where the petitioners and others attacked father of the *de facto* complainant and found him dead with bleeding injuries. The *de facto* complainant enquired the said Noor regarding the attack, then he explained the manner of attack that when they were returning from the wine shop, one Risk Varma called them, and then they stopped the bike, Kothapalli Victor Babu, Nelapati Rajesh, Routhala Raghu and Katout Sai came to them, Risk Varma, Katout Sai and Routhala Raghu caught hold the father of the *de facto*

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complainant, and Victor Babu attacked him with a knife which he brought along with him in the stomach of Venkateswara Rao and Nealapati Rajesh and Risk Varma attacked him with a boulder on the head. Routhula Raghu took the knife from Victor Babu's hand and attacked the said Venkateswara Rao. Thus, father of the *de facto* complainant died in the attack of the said persons. On the strength of the same, the police registered the crime and issued F.I.R.

During hearing, while reiterating the contentions in the petition, Sri Mangena Sreerama Rao, learned counsel for the petitioners, contended that no specific overt act is attributed against the petitioners and that they are not participated in the crime, but they were implicated falsely and placed reliance on the Judgment of the Apex Court in **Rabindra Kumar Pal Alias Dara Singh v. Republic of India**¹ to contend that in the absence of any overt act, the petitioners are entitled to claim pre-arrest bail, though the offence allegedly committed by the petitioners is serious in nature and therefore prayed to grant pre-arrest bail to the petitioners exercising discretion under Section 438 of Cr.P.C.

The Public Prosecutor for the State of Andhra Pradesh opposed the petition on various grounds mainly contended that the petitioners presence is mentioned in the Mediators Report dated 12.03.2017 drafted at 4.30 p.m. and the investigation so far done discloses the actual participation of the petitioners in the above crime and thereby these petitioners are disentitled to claim pre-arrest bail.

¹ (2011) 2 SCC 490

As seen from the F.I.R., no specific overt act has been attributed against the petitioners and in the absence of reference of these petitioners in the entire report, now the question is whether the petitioners are entitled to claim pre-arrest bail on the ground that there was no allegation in the complaint about their participation in the above crime i.e. murder of Venkateswara Rao - father of the *de facto* complainant. The complaint is lodged by Kode Raj Kumar, son of the deceased, who was not present at the time of incident and he was not an eye witness to the incident, but he came to know about the occurrence of the incident, through another person Shaik Ahmed Noor, who was in the company of the said Venakteswara Rao at the time of the incident. Therefore, the *de facto* complainant, is not a direct witness to the incident, is not expected to narrate the entire incident in the complaint. However F.I.R. is only an information to the police about the occurrence of the cognizable offence to set the criminal law into motion, it need not contain minute details and it is not an encyclopaedia of facts. The purpose of lodging the complaint is only limited and during investigation, the police can identify the actual culprit of the murder of Venkateswara Rao. Therefore, in the absence of any allegations in the complaint, including the presence of the petitioners in the complaint, is not a ground to enlarge them on pre-arrest bail.

It is also contended by the counsel for the petitioners that in the absence of specific overt acts, even in the remand report and also statement of the witnesses recorded by the police, during investigation, under Section 161 (3) Cr.P.C. the petitioners are entitled to claim pre-arrest bail, whereas the public prosecutor for the state of Andhra

Pradesh based his contention on the extra judicial confession made by the A.1 – Kothapalli Victor Babu, which disclosed about the participation of these persons in the incident. No doubt the extra judicial confession is not a substantive piece of evidence. At this stage it is difficult to hold whether such confession is voluntary or not and making such confession before the third party depends upon the various circumstances. But on account of such confession, it is difficult for me to conclude that whether the petitioners did commit any offence or not.

In **Rabindra Kumar Pal @ Dara Singh V. Republic of India** referred supra the Apex Court held that the presumption of innocence is a fundamental principle of criminal jurisprudence. But it is at the stage of pronouncement of Judgment, after full fledged trial, in appeal. At this stage it is difficult for me to conclude that the petitioners are entitled to claim pre-arrest bail.

Grant of pre-arrest bail is purely discretion of the court, negation of the bail is a matter of routine and grant is an exception. Unless the court found that there is no, *prima facie*, material to conclude that the petitioners did commit no offence and there are no chances of the accused fleeing away from justice and interfering with further investigation, the court cannot grant pre-arrest bail as a matter of routine as held by the Apex Court in **Gurbaksh Singh Sibbia V. State of Punjab**².

Similarly, in **Siddharam Satlingappa Mhetre V. State Of Maharashtra And Others**³, the Apex Court held as follows:

² AIR 1980 SC 1632

³ 2011 Cri.L.J. 3905

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- 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;
- 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.

In view of the principles laid down by the Apex Court, if the court comes to the conclusion, *prima facie*, that the petitioners did commit no offence, the gravity of offence, chances of threatening the witnesses and societal interest and individual right of liberty are the facts to be considered. But in the present case, father of the *de facto* complainant - Venkateswara Rao was brutally murdered during mid night while he was coming from the wine shop, and the investigation is not yet

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completed. Therefore, taking into consideration the gravity and seriousness of the offence, the way in which father of the *de facto* complainant -Venkateswara Rao was brutally murdered, it is difficult for me to exercise discretion under Section 438 of Cr.P.C. to grant pre-arrest bail to the petitioners. Consequently the criminal petition is liable to be dismissed.

In the result, the criminal petition is dismissed.

M.SATYANARAYANA MURTHY, J

17.04.2017
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