

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.484 OF 2017

ORDER:

This criminal petition is filed under Section 438 of Cr.P.C, for grant of pre-arrest bail in connection with Crime No.165 of 2016 for the offences punishable under Sections 304-A, 201 r/w.34 I.P.C of P.S.Julurpad, Bhadradri Kothagudem District, apprehending his arrest in connection with the above crime.

2. Petitioner is Banoth Harilal who allegedly arranged electrical fencing to trap the wild animals for hunting. When the petitioner along with deceased were hunting the animals during night, deceased contacted electrical wires and died.

3. The death is not in dispute. But the contentions of the petitioner is that he is no way concerned and that entire investigation is completed, thereby the question of interfering with the investigation does not arise and prayed to grant pre-arrest bail to the petitioner.

4. During the course of hearing, learned counsel for the petitioner brought to the notice of this Court that Section 135 of the Electricity Act, is also included and crime was registered for the offence punishable under Section 304-A, 201 r/w. 34 IPC and Section 135 of the Electricity Act. Section 304-A, 201 r/w.34 IPC are only bailable offences. But whereas the offence punishable under section 135 of the Electricity Act, is a cognizable and non-bailable offence, but curiously this fact was not mentioned in the bail petition itself. Moreover the allegation in the complaint would disclose that making such arrangement of electric fencing to trap the animals coming from forest, shows that petitioner negligently

arranged such electrical trapping though he is aware that it would cause harm to the persons who had contact with such trapping. Therefore, the allegations made in the complaint would prima-facie, attract the offence punishable under Sections 304-A, 201 r/w.34 IPC and Section 135 of Electricity Act.

5. Grant of pre-arrest bail under Section 438 Cr.P.C., is purely discretionary and this Court has to exercise its judicial power based on settled principles. But exercise of such jurisdiction may vary from case to case.

6. The law regarding grant of anticipatory bail is elaborately discussed by the Constitutional Bench of Apex Court in **Gurbaksh Singh Sibbia Sarbajit Singh Vs State of Punjab**¹, the power of granting anticipatory bail is somewhat extraordinary in character and it is only in exceptional cases where it appears that a person might be falsely implicated, or a frivolous case might be launched against him, or there are reasonable grounds for holding that a person accused of an offence is not likely to abscond, or otherwise misuse his liberty while on bail that such power is to be exercised.

7. But the converse of these propositions is not necessarily true. That is to say, it cannot be laid down as an inexorable rule that anticipatory bail cannot be granted unless the proposed accusation appears to be actuated by mala fides; and, equally, that anticipatory bail must be granted if there is no fear that the applicant will abscond. There are several other considerations, too numerous to enumerate, the combined effect of which must weigh with the court while granting or rejecting anticipatory bail. The nature and seriousness of the proposed charges, the context of

¹ 1980 (2) SCC 565

the events likely to lead to the making of the charges, a reasonable possibility of the applicant's presence not being secured at the trial, a reasonable apprehension that witnesses will be tampered with and "the larger interests of the public or the state" are some of the considerations which the court has to keep in mind while deciding an application for anticipatory bail.

8. Therefore, anticipatory bail can not be granted in economic offences and status should have no consideration for grant or refusal to grant anticipatory bail as there can be no presumption that the wealthy and the mighty will submit themselves to trial and that the humble and the poor will run away from the course of justice, any more than there can be a presumption that the former are not likely to commit a crime and the latter are more likely to commit it. Therefore, while dealing with application for grant of pre-arrest bail the Court must take into consideration of the guidelines issued in Gurbaksh Singh's case referred supra and later judgment in **SIDDHARAM SATLINGAPPA MHETRE VS. STATE OF MAHARASHTRA AND OTHERS**², 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;

² 2011 Cr.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.

9. In view of these guidelines, the Court must consider the chances of interfering with the investigation and conduct of the petitioner at or before committing alleged offences. Petitioner was allegedly accompanied with the deceased at the time of incident but still he did not report the same to the concerned authorities and maintained silence and tried to screen the evidence. In such case, the petitioner cannot be enlarged on pre-arrest bail, in view of the principles laid down in the above judgment.

10. Hence, I find no ground to grant pre-arrest bail and consequently, the criminal petition is liable to be dismissed. At this stage, learned counsel for the petitioner requested that petitioner may be granted liberty to surrender before the Court concerned.

11. In the result, the Criminal Petition is dismissed. However, the petitioner is at liberty to surrender before the Court concerned and seek bail.

Consequently, miscellaneous petitions, if any, pending in this Petition shall stand dismissed.

M.SATYANARAYANA MURTHY,J

1st February, 2017
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HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY



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Dated :01.02.2017

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