

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.2931 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 petitioner/Accused seeking a direction to the Station House Officer, Achampet Police station, Nagar Kurnool District, to enlarge them on bail in the event of their arrest in Crime No.38 of 2017 registered for the offence punishable under Section 420, 468, 471 of Indian Penal Code, 1860 (for short 'I.P.C.'), apprehending their arrest.

These petitioners approached this court straight away under Section 438 of Cr.P.C. without approaching the Sessions Court. Though this court and the sessions court are having concurrent jurisdiction, this court can exercise discretion while entertaining such applications depending on the circumstances. In **Y. Chendrasekhara Rao and others v. Y.V. Kamala Kumari and others**¹ the Division Bench of this Court, at paragraph 28, held as follows:

“For the foregoing reasons we hold that it is not obligatory under Section 438 to move the Court of Session in the first instance. It is always open to this Court when an application is filed under Section 438, without first moving the Court of Session, to consider all the circumstances, and if the situation warrants, this Court can direct the party to move the Court of Session. Passing of such an order in consequence of exercise of discretion is different from insisting upon the party to move the Court of Session in the first instance as an inflexible rule of practice. The existing practice of the Registry in returning applications filed under Section 438 on the ground that the Court of Session is not moved in the first instance, is clearly impermissible in law”

¹ 1993 Cri.L.J.3508

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In view of the law declared by the Division Bench of this Court in **Y. Chendrasekhara Rao and others v. Y.V. Kamala Kumari and others** referred above, the petitioners are permitted to move appropriate application before the sessions court.

With the above direction, this petition is disposed of.

M.SATYANARAYANA MURTHY, J

17.04.2017
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