THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No. 1673 OF 2017

ORDER:

This criminal petition under Section 438 Cr.P.C is filed by the sole accused in Crime No.11/RCA-ACB/CIU-AP-Hyd/2016 dated 02.07.2016 for the offences punishable under Sections 13(2) read with 13(1)(e) of Prevention of Corruption Act, to direct the Deputy Superintendent of Police, CIU, A.P, Hyderabad, to release the petitioner on bail in the event of her arrest in connection with the above crime apprehending her arrest.

The brief facts of the case are that the petitioner is a native of Srikakulam District and presently working as a District Medical and Health officer in Kurnool District. She joined in service on 20.02.1985 and initially she was posted as Civil Assistant Surgeon, Health Medical & Family Welfare, Andhra Pradesh and later she was promoted as Civil Surgeon at Vijayanagaram District and presently working in the same capacity in Kurnool District. She was transferred recently to Kurnool District From Vijayanagaram on corruption allegations. The petitioner was allegedly indulged in corrupt practices by abusing her official position while in public service, thereby, acquired assets by illegal and dubious means worth Rs.2,23,24,337/- in her name and in the name of her husband and son. The approximate salaried income, probable agricultural income and probable loans of the petitioner for the check period i.e. from the date of entry into service till date is worked about to Rs.2,00,00,000/- as well the probable expenditure incurred by her for the maintenance of her family, education of children and stamp duty and registration charges etc, during the said check period is worked out to Rs.1,15,00,000/-. Thus, she would have saved Rs.85,00,000/- out of the total income after deducting the probable expenditure. But the petitioner is in possession of assets worth Rs.2,23,24,337/-. The value of the property acquired by her is disproportionate to the known source of income and thus, she allegedly committed an offence punishable under Section 13(2) r/w 13(1)(e) of Prevention of Corruption Act. In pursuance of the search warrant issued by the in-charge III Additional District & Sessions Judge-cum-Spl. Judge for ACB Cases, Visakhapatnam, search was conducted in the residence of the petitioner at Kurnool in the presence of Police, ACB and CIU personnel. In the first inventory, the officials found documents pertaining 14 items of immovable property i.e. house buildings and lands at various places. Out of the said 14 items, 7 were allegedly registered in the name of the petitioner and the other 7 were registered in the name of her husband. In the second inventory, the officials found household articles worth Rs.8,07,200/-, gold ornaments worth Rs.4,94,500/-, silver articles worth Rs.17,394/-. In the second inventory proceedings, the Investigating Agency observed that the husband of the petitioner is a Super Specialist Doctor in Neuro Surgery and working in Navachetan Multi Specialty Hospital, Pathankot of Punjab State as a private practitioner. The son of the petitioner Dr. Sri harsh is practitioner in Visakhapatnam and he has completed his Master Degree in pediatrics. It is further averred in the inventory proceedings that the petitioner and her husband secured certain loans from banks for purchase of Vijaya Hospital, MVP Colony, Visakhapatnam, which are subject to verification during the course of further investigation and the assets, income and expenditure of the petitioner and his family members are subject to investigation in detail during the course of further investigation. Thus, the petitioner allegedly possessed assets disproportionate to her known source of income. The present criminal petition is filed apprehending her arrest in connection with the above crime.

The main grounds raised in the petition are that on receipt of notice under Section 41-A Cr.P.C, the petitioner appeared before the police on various dates scheduled by them, but on one or two occasions she could not appear as the notice under Section 160 Cr.P.C are ante-dated. However, she was attending to pulse polio programme, thereby she could not appear before the Investigating Officer on few dates prescribed by them.

The other contention of the petitioner is that her husband and children are all doctors including her daughter Dr. Katyayani and their income as per the Income Tax Returns from 1986 onwards was about Rs.12,42,14,198/- and in such case, the properties possessed by her cannot be said to be disproportionate and also further contended that she is ready and willing to appear before the concerned officers by extending her utmost cooperation and prayed to enlarge the petitioner on bail, in case of her arrest, as there is possibility of causing damage to her reputation in the event of her arrest.

Learned Standing Counsel-cum-Special Public Prosecutor for ACB, file counter reiterating the allegations made in the earlier report, directly pointing out that the petitioner possessed disproportionate assets worth Rs.3,12,16,122/-. It is contended that when notice was issued to the petitioner under Section 41-A Cr.P.C, she appeared on certain occasions. But, the petitioner failed to appear for the notice issued under Section 160 Cr.P.C, which was served upon her. The learned Standing Counsel submits that the petitioner is not entitled to claim pre-arrest bail. In paragraph 6 of the counter, the learned Standing Counsel raised the following grounds to decline pre-arrest bail to the petitioner, which are extracted hereunder:

1. Investigation is at initial stage with regard to movable and immovable properties of the accused which unearthed during course of searches and oral documentary evidence is to be collected from the witnesses as well as institutions.

2. Several witnesses are to be examined and documentary evidence is to be collected with regard to the income of the AO and her family members in Kurnool, Srikakulam, Vizianagarm, Visakhapatnam Districts in A.P. and certain places in Chattisgarh State, Punjab State and also income received by AO's husband from Gulf Countries.

3. Several witnesses are to be examined and documentary evidence are to be collected with regard to the expenditure of the AO and her family members in Kurnool, Srikakulam, Vizianagaram, Visakhapatnam, East Godavari Districts in A.P. and certain places in Chattisgarh State, Punjab State and also income received by AO's husband from Gulf Countries.

4. Huge investment to purchase a hospital building was unearthed during searches of residential premises of A.O and the source of investment is to be unearthed and evidence is to be collected as to abusing of official position by the AO in investing her ill-gotten money.

5. Huge gold jewellery was unearthed during searches of residential premises of A.O and bank lockers and the source of accumulated gold is to be identified and evidence is to be collected as to abusing of official position by the AO in investing her ill-gotten gold.

6. The AO and her family members are possessing self acquired and ancestral agricultural lands and the agricultural income and cost of cultivation are to be calculated by utilizing the services of different government departments and also several witnesses are to be examined in this context.

7. There is every possibility that A.O likely to tamper with evidence and fabricate colourful evidence.

8. A.O is also likely to intimidate, influence, induce, threaten witness connected to the case in a direct or indirect manner jeopardizing the proceedings of investigation.

Learned Senior Counsel Sri C. Nageswara Rao appearing on behalf of the petitioner would contend that when the petitioner appeared in pursuance of the notice under Section 41-A Cr.P.C on various dates, the respondent would not have resorted to file a memo before the Special Judge for Trial of Cases under Prevention of Corruption Act seeking permission to arrest the petitioner and initially issued a notice under Section 160 Cr.P.C with ante-date. Moreover, the petitioner was busy with pulse polio programme in the headquarters and in such case, it is difficult for her to appear before the concerned officials of the respondent and it is not a ground to arrest the petitioner in the above crime and even now, she is ready to appear before the concerned authorities.

It is further contended by the learned Senior Counsel appearing for the petitioner that the material on record, more particularly, the income details furnished by the petitioner would show that the family members were earning substantially, being doctors including husband and children and the properties allegedly disproportionate to the known source of income is negligible part of their income. Therefore, in such a case, *prima facie*, the petitioner did commit no offence and therefore, the petitioner is entitled to pre-arrest bail, in the event of her arrest in connection with the above crime.

Whereas, the learned Standing Counsel for ACB would contend that the crime was registered against the petitioner and Investigating Agency decided not to arrest her and issued notice under Section 41-A Cr.P.C. But, the petitioner did not appear before the concerned officials extending her cooperation to complete the investigation and avoided her appearance on various dates. Therefore, the petitioner is disentitled to claim pre-arrest bail, as she is not co-operating with the investigation with the Investigating Agency. Learned counsel has drawn attention of this Court to the notice issued under Section 41-A Cr.P.C to the petitioner and proceedings filed before III Additional District Judge-cum-Special Judge for ACB cases contending that the investigation is in the initial stage and it is to be completed on various aspects referred in the above and also other aspects arising during investigation. Further, it is contended that several witnesses and documents need to be examined and there is every possibility of the petitioner likely to threaten witnesses and tamper the evidence and also intimidate, influence, induce, threaten any other witnesses connected with the transactions, which would jeopardize the proceedings of investigation and thereby the arrest of the petitioner is necessary in this case and sought for permission to arrest the accused by letter dated 27.01.2017. On the strength of this letter, it is contended that when the petitioner is not cooperating for completion of investigation, she is disentitled to claim pre-arrest bail.

As seen from the material available on record, more particularly, the inventory proceedings, the petitioner own and possessed substantial property, including the property in the name of her husband. But, at this stage, it is difficult to find out whether the properties were acquired by her husband with his own income or not. However, there are 7 immovable properties registered on his name and the other 7 immovable properties were registered in the name of the petitioner herself. In such case, it is difficult for me to express any opinion whether the petitioner obtained sale deeds in the name of her husband as a benami, since it is a question of fact to be decided during trial. Moreover, the income details produced before the Court are not authenticated documents and it is only a statement typed on a piece of paper. Basing on such details, it is difficult for me to conclude that the family members of the petitioner being doctors earned huge income. Therefore, the properties owned and possessed by the petitioner worth in crores, which is disproportionate to the known source of income *prima facie*.

Grant of bail on execution of bond by the accused is to protect the fundamental right of liberty guaranteed under Article 21 of Constitution of India and to secure her presence during trial. As the petitioner is a highly placed Woman Medical Officer in the Medical Department in the district level, the Investigating Agency decided not to arrest the petitioner initially and issued a notice under Section 41-A Cr.P.C. But, the petitioner did not obey the directions issued by the Investigating Agency and failed to appear before the authorities on various dates and thereby, she did not extend her cooperation for completion of investigation. In such a case, the petitioner is disentitled to claim pre-arrest bail.

Moreover, the Investigating Agency has to examine the details of the properties in different angles. But, face value of the documents, the value of the registration would normally show the value for the purpose of registration in the registers maintained by the District Registrars, but not the actual market value and the Investigating Agency has to examine the concerned vendors of the petitioner and her husband to find out truth and value of the transaction. Apart from that, the other properties and other details of her husband and others has to be investigated into, to unearth the fraudulent earnings in the guise of official position. Therefore, as on today, the investigation is at foetus stage and the petitioner is not extending her cooperation on receipt of notice under Section 41-A Cr.P.C, enabling the Investigating Agency to complete the investigation. In such case, the petitioner is not entitled to claim pre-arrest bail. The learned Standing Counsel for ACB filed requisition before the Special Judge for Trial of ACB cases dated 27.01.2017, with a request to permit the respondent to arrest the petitioner, as interrogation is necessary for completion for investigation narrating the circumstances which compelled them to arrest the petitioner. The Special Judge for Trial of ACB cases has also passed an order permitting the respondent to effect the arrest of the petitioner. But, no such order is placed before the Court. However, believing the submission of the learned Standing Counsel for ACB, passing of order is accepted. The petitioner and her family members are all doctors and influential persons being Head of the District in Medical Department interfering with the investigation and influencing witnesses, cannot be ruled out. In such a case, if the petitioner is enlarged on bail, certainly there is every possibility of interfering with further investigation of the case.

Section 438 Cr.P.C deals with direction for grant of bail to person apprehending arrest and it reads that (1) when any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for direction under this section; and that Court may, if it thinks fit, direct that in the event of such arrest, he shall be released on bail. (2) When the High Court or the Court of Session makes a direction under sub-section (1), it may include such conditions in such directions in the light of the facts of the particular case, as it may thinks fit, including- (i) a condition that the person shall make himself available for interrogation by a police officer as and when required: (ii) a condition that the person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer; (iii) a condition that the person shall not leave India without the previous permission of the Court; (iv) such other condition as may be imposed under sub-section (3) of section 437, as if the bail were granted under that section.

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. The law regarding grant of anticipatory bail is elaborately discussed by the Constitution Bench of the Apex Court in **Gurbaksh Singh Sibbia and Ors v. State of Punjab**[1] case, as 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. No hard and fast rule can be laid down in discretionary matters like grant or refusal of bail whether anticipatory or regular bail. The Apex Court further held that, it cannot be laid down as an

[1] AIR 1980 SC 1632

inexorable rule that anticipatory bail cannot be granted unless the proposed accusation appears to be actuated by mala fides; 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 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. Therefore, anticipatory bail can be granted even in serious cases like economic offences and States should have no concern for grant or refusal of 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 the application for grant of pre-arrest bail or anticipatory bail, the Court must take into consideration the guidelines issued in **Gurbaksh Singh Sibbia**[1] case. Though, according to the judgment of the Supreme Court, even in economic offences, the Court can grant anticipatory bail, subject to satisfaction of other grounds.

On the strength of the same principles in **Jai Prakash Singh**

v. State of Bihar[2], the Supreme Court held that Anticipatory bail can be granted only in exceptional circumstances where the court is prima facie of the view that the applicant has falsely been enroped in the crime and would not misuse his liberty. The Courts are expected to deal with very serious matters seriously, but not in casual and cavalier manner and grant of anticipatory bail by extending unwarranted sympathy towards accused by exercising discretion. Court might not exercise its discretion in derogation of established principles of law, rather it had to be in strict adherence to them. Discretion had to be guided by law, duly governed by rule and could not be arbitrary, fanciful or vague and Court must not yield to spasmodic sentiment to unregulated benevolence. Any order dehors grounds provided in Section 438 of CrPC is illegal.

Keeping in view the various principles enunciated by the Apex Court in the various judgments referred supra, to grant pre-arrest bail to any accused in a cognizable office, the Court must records its satisfaction that there is no *prima facie* material to conclude that the petitioner did commit no offence and that there is no possibility of the accused tampering the evidence and interfering with the investigation and that the accused will not threaten the witness and cooperate with the Investigating Agency to complete the investigation.

The learned counsel also drawn the attention of this Court to the principles laid down in **Gurbaksh Singh Sibbia**[1] and reiterated the duty of the Court while deciding an application filed under

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[2] AIR 2012 SC 1676

Section 438 of Cr.P,.C and the guidelines to be followed for grant of such bail.

Learned Counsel contended that for grant of pre-arrest bail under Section 438 Cr.P.C, certain principles have been laid down by the Apex Court and the Courts are bound to follow the guidelines laid down by the Apex Court in **Bhadresh Bipinbhai Sheth v. State of Gujarat and another**[3]. The Apex Court only reiterated the 10 guidelines laid down in **Siddharam Satlingappa Mhetre vs State Of Maharashtra**[4] 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;
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> 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;
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> iii. The possibility of the applicant to flee from justice;
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> iv. The possibility of the accused's likelihood to repeat similar or the other offences.
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> v. Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.
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> vi. Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.
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> 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;
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> 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;
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> ix. The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;
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> 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

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[3] (2016) 1 Supreme Court Cases 152
[4] AIR 2011 SC 312

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 **Siddharam Satlingappa Mhetre[4]** case, the Apex Court analyzed the principles in various judgments and considering the law on anticipatory bails in other countries, laid down 10 guidelines which are referred supra.

There is no quarrel regarding the law laid down by the Apex Court in **Bhadresh Bipinbhai Sheth[3]** case. But, the relief under Section 438 Cr.P.C is purely discretionary and the Court has to exercise its discretion judiciously. But, nowhere in the guidelines in judgments, the Court did not explain as to how the Court can exercise its judicial discretion in a petition filed under Section 438 Cr.P.C.

In the present case, the material on record *prima facie* would show that the petitioner own and possessed assets disproportionate to the known source of income and the income particulars that she produced before this Court are not authenticated. Therefore, they cannot be taken into consideration at this stage to come to such a conclusion that the petitioner did commit no offence. Moreover, the petitioner is not extending her cooperation to compete the investigation even after receipt of notice under Section 41-A Cr.P.C. However, a peculiar contention is raised in the petition that notice under Section 161 Cr.P.C was served on the petitioner with ante-date. But, there is no basis to such contention. Therefore, when the petitioner is not cooperating for completion of investigation with the Investigating Agency, there is every possibility of tampering and threatening witnesses, taking advantage of the official position. Hence, the petitioner is not entitled to claim pre-arrest bail. Therefore, taking into consideration all the facts and circumstances of the case, I find no extraordinary circumstances which entitled the petitioner to claim pre-arrest bail. Hence, the petition is liable to be dismissed.

In the result, the criminal petition is dismissed.

Consequently, miscellaneous applications pending if any, shall also stand dismissed.

JUSTICE M. SATYANARAYANA MURTHY

Dated: 17.03.2017

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