

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRL.P.No.197 OF 2017

ORDER:

This criminal petition is filed under Section 438 of Cr.P.C to grant pre-arrest bail in Crime No.503 of 2016 of III Town Police Station, Visakhapatnam, registered for the offences punishable under Sections 306, 448 and 506(2) read with 34 of IPC and Sections 3(s) 3(2)(v)(a) of S.C. and S.T. (POA) Act, 1989.

The case of the prosecution in brief is that the police received complaint dated 02.12.2016 from S.K.Sujani W/o S.V. Narasimha Rao, resident of Plot No.C-1, Villa Royal Prince Apartments, Siripuram, Visakhapatnam, alleging that she went to Nellore along with children to see her parents on 24.11.2016. While so, she received information in the early hours of 29.11.2016 that her husband expired and also came to know that he was taken to the hospital, where he was declared brought dead and body was kept in mortuary and she reached Visakhapatnam in the evening of 29.11.2016. Husband of the complainant was 53 years old and was patient of diabetes, pancreatitis etc. After cremation, she went to homeland. When she cleaning the house, she found two letters in the bed room, one is addressed to her and another is addressed to the C.I. of Police, III Town Police. In the letter addressed to the C.I. of Police, her husband mentioned that he is committing suicide due to harassment of three persons' viz.

Gudivada Ramakrishna, B. Pradeep and T.Appala Raju, and it is also mentioned in the letter that the above three persons came along with 'gundas'. The said Gudivada Ramakrishna along with one Dr Prasanna Kumar and another person, who is advocate, came to their office and house many times and threatened her husband with dire consequences and that they used to come in drunken state, and on some occasions, they also threatened with abusive language. T. Appala Raju and B. Pradeep also harassed and threatened her husband many times due to some financial transaction in the business. On the strength of the above complaint, the III Town Police registered the above crime and issued FIR.

The main contention of the petitioners/A1 and A4 is that the said two letters allegedly found in the bed room are concocted and that the petitioners never subjected the deceased to harassment and driven him to commit suicide and that none of the allegations made in the complaint would attract the offences and that they were falsely implicated by the wife of the deceased and therefore, prayed to enlarge them on bail in the event of their arrest in connection with the above crime.

During hearing, Sri B. Shashibhushan Rao, learned counsel for the petitioners would contend that the words mentioned in the letter with phone numbers below the signature are subsequently added and basing on such letters,

the petitioners cannot be roped with the serious crime of abetting the deceased to commit suicide. He also contended that the alleged act of harassment in the complaint would not amount to abetment under Sections 107 and 109 of IPC since they did not instigate the deceased to commit suicide either by act or omission. In support of his contention, he placed reliance of the Apex Court in **Gangula Mohan Reddy v State of Andhra Pradesh**¹, and that there is a reasonable apprehension of arrest of the petitioners in connection with the above crime and prayed to direct the concerned officials to release the petitioners in event of their arrest.

Learned Additional Public Prosecutor contended that the investigation is not completed and the letter addressed to the C.I. of Police would show the direct involvement of the petitioners in abetting the deceased to commit suicide by act or omission and if the petitioners are ordered to be enlarged on bail, there is every possibility of interference with further investigation and prayed to dismiss the criminal petition.

It is the case of the abetment to commit suicide and that the *de facto* complainant was abused on earlier occasion on her caste name, which attract offences punishable under Sections 3(s) and 3(2)(v)(a) of S.C. and S.T. (POA) Act, 1989. But the main contention of the petitioners is that the allegations made in the complaint would not constitute any offence of abetment to commit suicide. As seen from the letter

¹ (2010) 1 SCC 750

addressed to the C.I. of Police, the deceased was subjected to harassment by act or omission by the petitioners, which would attract, *prima facie*, offence punishable under Section 306 of IPC subject to proof during trial. Moreover, the contention that the names of the petitioners along with phone numbers were subsequently incorporated in the letter cannot be decided at this stage, unless, the investigation is completed and it is difficult to come to such conclusion at this stage to grant pre-arrest bail.

The other allegations against the petitioners are that they abused the *de facto* complainant raising her caste name and the said incident took place long prior to the alleged offence, but the same is not a ground to grant pre-arrest-bail to the petitioners. Therefore, at this stage, it is difficult to accept that there is no *prima facie* material since the investigation is not yet completed.

Learned counsel for the petitioners drawn the attention of this Court to the judgment of the Apex Court in **Gangula Mohan Reddy's** case supra where the Supreme Court held that to constitute an offence punishable under Section 306 of IPC, the respondent has to satisfy the ingredients of Section 107 of IPC viz., firstly instigates any person to do that thing; or secondly engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in

order to the doing of that thing; or thirdly intentionally aids, by any act or illegal omission, the doing of that thing.

But here, according to the petitioners, there is no instigation or omission or commission to commit suicide by the petitioners but it is a premature to decide such contention as the investigation is still going on. Therefore, I find that it is not a fit case to grant pre-arrest bail. Of course, it is a matter of exception unless the petitioners show certain exceptional circumstances to grant pre-arrest bail, the Court cannot grant pre-arrest bail in view of the law declared by this Court in **State of Maharashtra Vs. Mohd. Sajid Husain²**, the Hon'ble Apex Court laid down the following guidelines for grant of pre-arrest bail:

1. *The nature and gravity or seriousness of accusation as apprehended by the applicant;*
2. *The antecedents of the applicant including the fact as to whether he has, on conviction by a Court, previously undergone imprisonment for a term in respect of any cognizable offence;*
4. *The possibility of the appellant, if granted anticipatory bail, fleeing from justice.*

In another decision reported in **Siddharam Satlingappa Mhetre Vs. State of Maharashtra and others³**, the Hon'ble Apex Court held as follows:

The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:

- i) *The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;*

² AIR 2008 SC 155

³ 2011 CrI.L.J. 3905

- 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.*

If the principles laid down in the above decisions are applied to the present facts of the case, it is not a fit case to grant-pre-arrest bail to the petitioners.

The criminal petition is accordingly dismissed.

Pending miscellaneous petitions in the petition, if any,
shall stand closed.

M.SATYANARAYANA MURTHY,J

20.01.2017
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