THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.1464 OF 2017

ORDER:

This criminal petition is filed under Section 438 of Criminal Procedure Code (for short "Cr.P.C.") for grant of anticipatory bail to the petitioner in relation to Crime No.521 of 2016 on the file of Nellore Rural Police Station, SPSR Nellore District apprehending his arrest for the offences punishable under Sections 120b, 468, 469 471, 506 IPC and Sections 54 & 71 of Information Technology Act.

The defacto complainant lodged a complaint dated 28.12.2016 with the Station House Officer, Nellore Rural Police Station, SPSR District making serious allegations against the petitioner mainly alleging that the petitioner herein along with others hatched a conspiracy to defame him in the public view, feeling insecure about his political survival in the near future. As a part of the conspiracy the petitioner started making false allegations against the defacto complainant through print and electronic media. It is stated in the complaint that the petitioner conducted press conference on 23.12.2016 in Nellore and distributed certain documents to the representatives of press alleging that the defacto complainant is holding large extent of land in Malaysia, one power project in Thailand, and holding millions of dollars in Singapore and Hongkong bank accounts of those countries. It is alleged that the petitioner created all those fake documents and fabricated them with a malafide intention to criminally intimidate the defacto complainant. Further, it is alleged that the petitioner has forged the signature of defacto complainant in certain documents distributed by him with an intention to blackmail the defacto complainant for gain of political survival in the near future. It is stated in the complaint that the petitioner fabricated a document as if the defacto complainant had travelled to Malaysia on 13.09.2003 and further the petitioner has forged the immigration stamp of Government of Malaysia. The defacto complainant submitted in the complaint that he did not travel to Malaysia on such date and forgery of immigration stamp of Government of Malaysia is a matter of serious concern.

It is alleged that the petitioner also fabricated a document of OCBC Bank, Singapore stating that an amount of 2 million Singapore dollars has been transferred to the account of defacto complainant's wife. The defacto complainant submitted that the said bank document is a fake document falsely fabricated by the petitioner with a criminal intention to drive the defacto complainant in to money laundering and hawala crimes. It is further alleged that the petitioner created some more fake documents to create an impression that the defacto complainant deposited huge amount of money in foreign currency in the bank accounts of his wife and son and submitted that the said document is a forged one.

The defacto complainant annexed copies of the documents allegedly created by the petitioner including C.D of press conference held by the petitioner to show his involvement in the alleged incidents. On enquiry by the defacto complainant, he came to know that the petitioner herein conspired with his associates to criminally intimidate and blackmail the defacto complainant and his family members by making false propaganda, forgery, fabrication of fake documents by airing false information against the defacto complainant, in the public and it was mentioned in the said press conference by the petitioner in the print and electronic media that the defacto complainant was holding power projects valued about Rs.1,000 crores in countries like Thailand, Malaysia, Hongkong and Singapore that the defacto complainant amassed ill-gotten wealth and violated the law of the country in Prevention of Corruption Act, Money Laundering Act and Foreign Exchange Management (F.E.M.A) Act, thus the petitioner allegedly used the forged documents as originals and aired the news in print and electronic media. The video clippings of the press conference, the documents allegedly created by the petitioner along with his associates were annexed to the complaint. On the strength of the said complaint, the police registered the above crime and issued F.I.R.

It is the case of the petitioner that the petitioner was elected as Zilla Praja Parishad Chairman of SPSR Nellore District in the month of July, 2006 and he successfully completed his 5 year tenure. The defacto complainant contested on behalf of Telugu Desam party in Zilla Praja Parishad elections held in July 2006 and he was elected as ZPTC member from Pellakuru Mandal. But out of 46 ZPTC Members of Nellore Zilla Parishad, Congress Party won 31 ZPTC Members and Telugu Desam Party won 15 ZPTC members. Hence, the defacto complainant failed to contest to the post of Zilla Praja Parishad in the lections held in July 2006. But, in the general elections held in the years 2004 and 2009 to the Legislative Assembly of Andhra Pradesh State, the defacto complainant contested from Survepalli Assembly Constitutency and in both the elections he was defeated by one Adala Prabhakar Reddy of Congress Party. Subsequently, in May 2014, elections were held to the Legislative Assembly of Andhra Pradesh State. The petitioner herein contested from Survepalli Constituency on behalf of YSR Congress Party and the defacto complainant contested on behalf of Telugu Desam Party. In the said election, the petitioner was elected with the majority of 5446 votes against his immediate rival, i.e. the defacto complainant. It is mentioned in the affidavit that, since his defeat in 2014 Assembly Elections, the defacto complainant made several efforts to implicate the petitioner in false criminal cases in order to defame him and the present case is one among them.

The petitioner submitted in the affidavit that he received information that the defacto complainant and his family members are possessing assets in foreign countries and the addressed a letter on 30.12.2016 to the Joint Director (Administration) Enforcement Directorate to conduct thorough investigation with regard to the complicity of the defacto complainant and his family members for their contraventions of the provisions of Prevention of Money Laundering Act and the provisions of Foreign Exchange Management Act. It is submitted that the petitioner, as a bonafide citizen made such attempt to unearth the fraud committed by the defacto complainant and therefore, lodging such complaint would not attract any offences either punishable under Sections 120b, 468, 469 471, 506 IPC or under Sections 54 & 71 of Information Technology Act or both.

It is stated in the affidavit that petitioner moved an application for anticipatory bail before the Sessions Court in Crl.MP.No.84 of 2017 apprehending his arrest in connection with the above crime and therefore, sought a direction against the Station House Officer to release the petitioner in the event of his arrest in connection with the above crime.

During hearing, Sri O. Manohar Reddy, learned counsel for the petitioner would contend that the petitioner did commit no offence, and on account of political rivalry he was falsely implicated in the crime and moreover, the entire investigation is completed and the other accused who were associated in the above crime were already enlarged on bail and in such case, the question of interference of the petitioner in further investigation would not arise in the event of granting pre-arrest bail. Learned counsel for the petitioner also contended that, in the absence of any allegations to constitute the offence at the inception itself, the petitioner cannot be roped with such offences and when crime was registered at the instance of a rival M.L.C, with a malafide intention, the petitioner cannot be arrested in connection with the above crime, since it is actuated by malafide intention on account of political rivalry in Survepalli Constitutency of Nellore District. Learned counsel for the petitioner further contended that, in case, the petitioner is arrested in the above crime, the petitioner being a member of Legislative Assembly, though belonging to opposition party in the State, would be put to incalculable loss and therefore, sought for pre-arrest bail in the event of his arrest in connection with the above crime.

Per contra, Sri Posani Venkateswarlu, learned Public Prosecutor for the State of Andhra Pradesh contended that the petitioner though belongs to a rival political party of the defacto complainant, the material collected by the Investigating Agency so far would show that the petitioner is directly indulged in such serious offences of forging the passports, registering fake documents and bank accounts in foreign countries like Singapore, Hongkong, Malaysia and Thailand. It is contended that the petitioner is a habitual offender and earlier he committed identical offences and he was involved in 7 cases totally and out of the 7 cases, 4 cases are under A.P. Prohibition & Excise Act. The other cases that the petitioner was involved are in connection with the offences punishable under Section 487 i.e. for manufacturing spurious liquor and fabrication of labels. It is submitted that the petitioner is also an accused in another offence in the State of Pondicherry for the offence punishable under Section 392 IPC. As the petitioner is a habitual offender in creating fake documents, like fake labels and manufacturing spurious liquor, he created the present documents so as to malign the reputation of the defacto complainant, though he is highly placed on political strata.

Learned Public Prosecutor further contended that the investigation is not yet completed and the Investigating Agency addressed letters to various countries to find out the truth in the allegations made against the petitioner and others, based on the complaint, more particularly, to detect the alleged forgery of various documents of foreign countries. If, for any reason, the petitioner is enlarged on pre-arrest bail, there is every possibility of interfering with further investigation, since the offences allegedly committed by the petitioner is based on various documents. In such a case, the petitioner cannot be enlarged on pre-arrest bail. It is also contended by the leaned Public Prosecutor that grant of anticipatory bail or pre-arrest bail is purely discretionary and when the petitioner is having such criminal background and approaching the Court without disclosing the petitions filed by him before the Sessions Court for his surrender in pursuance of the direction issued by the Sessions Court vide orders in Crl.MP.No.84 of 2017 dated 14.02.2017 would amount to suppression of fact which disentitles him to claim discretionary relief. It is also contended that the petitioner conveniently filed W.P.No.83 of 2017 and obtained an interim order 'not to arrest'. However, the petitioner moved before the High Ciourt and filed a memo to withdraw W.P.No.83 of 2017 which is pending before this Court. Even as on today, the interim order passed by this Court in W.P.No.83 of 2017 i.e. 'not to arrest' is still in force. In such a case, the petitioner cannot approach this Court for grant of pre-arrest bail while the interim order is in force, as no order was passed dismissing the writ petition as withdrawn. Therefore, the learned Public Prosecutor would submit that, this Court cannot exercise its discretion to grant pre-arrest bail to such a person having criminal background, besides political enmity with the defacto complainant and prayed to dismiss the criminal petition.

Considering the rival contentions and perusing the material produced before this Court, the sole point that arise for consideration is

> ***"whether the petitioner is entitled for anticipatory/pre-arrest bail?"***

Undoubtedly, the High Court and Sessions Court are conferred with power to grant anticipatory or pre-arrest bail to the accused who allegedly committed a non-bailable offence. The jurisdiction of the High Court and Sessions Court is concurrent and a party can approach either of the Courts. The petitioner filed Crl.P.MP.No.84 of 2017 which ended in dismissal by order dated 14.02.2017 and the operative portion of the order reads as follows:

> "***In the result, the petition under Section 438 of Criminal Procedure Code for granting Anticipatory Bail is hereby dismissed. However, the petitioner/Kakani Govardhan Reddy, son of Ramana Reddy shall surrender before concerned Magistrate and move an application seeking regular bail after giving notice to the concerned Assistant Public Prosecutor, in such an event, the same shall be considered in accordance with the Law on the same day on such terms and conditions as Court deems fit. With the above direction, the petition is disposed off."***

It appears from the facts narrated above, due to political feud in the state, on account of bitter political enmity between members of rival political parties in the State, they are adopting unethical methods to de-stabilise their political existence in the constituencies they are representing, and such practices may lead to political anarchy.

Though the order was passed on 14.02.2017, the petitioner did not obey the directions issued by the Sessions Court, which I extracted herein above. On the other hand, the petitioner filed separate application for grant of anticipatory bail/pre-arrest bail, almost repeating the same grounds which are urged before the Sessions Court. Undoubtedly, this Court is competent to decide such independent application in view of the power conferred by this Court under Section 438 Cr.P.C and the petitioner need not challenge the order passed by the Sessions Court by filing any other objection. Moreover, the Court is not supposed to issue such direction except on the request of the petitioner without touching the merits of the case and at best, the Court can grant anticipatory bail or reject the bail application. But passing such an order appears to be against the settled principles of law. However, this Court is not sitting over the appeal against the order. Therefore, I need not decide the legality of the direction issued by the Sessions Court in Crl.P.MP.No.84 of 2017 dated 14.02.2017.

Before adverting to the facts of the present case and deciding the criminal petition with reference to the allegations made in the complaint, I would like to advert to the allegations made in the complaint and the material annexed to the complaint.

Here, the defacto complainant annexed several documents along with the complaint to show that those documents are forged and the petitioner convened a press conference and circulated the copies of those documents to the personnel of the print and electronic media. Thus, allegedly the forged documents which the petitioner allegedly used are genuine and created an impression in the mind of the general public through media that defacto complainant indulged in such fraudulent activities by violating various provisions of Prevention of Money Laundering Act and the provisions of Foreign Exchange Management Act. The offences allegedly committed by the petitioner are under Sections 120b, 468, 469 471, 506 IPC and Sections 54 & 71 of Information Technology Act.

Section 120-B I.P.C deals with punishment of criminal conspiracy. Section 120-A I.P.C defined criminal conspiracy as follows:

> ***When two or more persons agree to do, or cause to be done***
>
> ***(1) an illegal act, or***
>
> ***(2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:***

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Here, the petitioner allegedly committed an offence punishable under Section 120-B along with others who created the fake documents including the stamps of Immigration Department of Singapore and the petitioner obtained those fake documents from those persons allegedly and circulated in press conferences video clippings in the print and electronic media which is annexed to the complaint, as alleged by the defacto complainant. The defacto complainant also produced various documents as annexure No.1 to 25 to show that this petitioner indulged in criminal conspiracy as defined under Section 120-A IPC *prima facie* and circulated Photostat copies of such fake documents to the media persons is an act committed conspiring with A-2 & A-3, *prima facie*. Therefore, the material on record would got to show that the petitioner being a people's representative of Survepalli Constitutency for political vengeance or otherwise allegedly committed such offence. The allegation made in the complaint and the evidence collected so far would *prima facie* show that the petitioner committed such offence punishable under Section 120-B IPC.

Section 468 IPC is a penal provision for committing an offence of forgery for purpose of cheating. The words 'cheating' and 'forgery' are defined under Sections 415 and 463 respectively, which are as follows:

> **Cheating**: Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or

omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

Explanation- A dishonest concealment of facts is a deception within the meaning of this section.

Forgery: Whoever makes any false documents or part of a document with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.

Here, the petitioner allegedly circulated the forged documents so as to air news to public, allegedly. Distribution of such material to the media and telecasting the same as news item amounts to an offence punishable under Section 468 IPC is a question to be decided. To constitute the offence of 'cheating', there must be deceit any person, fraudulently or dishonestly inducing the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property. Therefore, intentional or fraudulent or dishonest inducement of a person would attract the definition of 'cheating'. Whereas, 'forgery' is concerned, making any false documents or part of record or electronic record with intent to cause damage or injury to the public or to any person would amount to offence constituting 'forgery'. Here, the originals of documents circulated to print and electronic media are allegedly forged and circulating such documents would certainly damage or injure the personal reputation of the defacto complainant *prima facie*. But, whether those documents are forged or not is a question to be decided based on the evidence collected during investigation. At this stage, the C.D file shows that the Investigating Agency collected material from different sources and concluded that this petitioner with the connivance of accused A-2 & A-3 forged those documents including the seal of immigration authorities of Government of Malaysia *prima facie*. Such act would attract an offence punishable under Section 465 IPC, though not under Section 468 IPC.

The other offence allegedly committed by the petitioner is punishable under Section 469 IPC i.e. forgery for purpose of harming reputation and it is defined as whoever commits forgery, intending that the document forged shall harm the reputation of any party, or knowing that it is likely to be used for that purpose, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine. Here, the alleged act of the petitioner i.e. if the documents are forged, then certainly it would harm the reputation of the defacto complainant *prima facie*.

Curiously, in the petition filed before this Court, the petitioner made certain admissions that he addressed a letter dated 30.12.2016 to the Joint Director (Administration) Enforcement Directorate to conduct thorough investigation with regard to the complicity of the defacto complainant for violation of the provisions of Prevention of Money Laundering Act and provisions of Foreign Exchange Management Act. Addressing such letter based on those documents may also attract the offence punishable under Section 469 IPC, if the prosecution is able to establish that those documents are forged.

The other offence allegedly committed by the petitioner is punishable under Section 471 IPC i.e. using as genuine a forged document and it is defined as whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be a forged document, shall be punished in the same manner as if he had forged such document. Here, various documents were produced along with the complaint lodged by the defacto complainant, more particularly, annexures 1 to 5 are forged documents allegedly. The allegations made in the complaint and the material collected by the Investigating Agency so far disclosed that those documents are forged *prima facie* and thus the petitioner used the copies of those documents and circulated to the print and electronic media so as to injure the reputation of the defacto complainant *prima facie.*

The other offences allegedly committed by the petitioner are under Sections 65 & 71 of Information Technology Act, which are extracted as follows:

> **"Section 65: Tampering with computer source documents.**
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> Whoever knowingly or intentionally conceals, destroys or alters or intentionally or
> knowingly causes another to conceal, destroy or alter any computer source code used for a computer, computer programme, computer system or computer

> network, when the computer source code is required to be kept or maintained by law for the time being in force, shall be punishable with imprisonment up to three years, or with fine which may extend up to two lakh rupees, or with both.
> Explanation.— For the purposes of this section, "computer source code" means the
> listing of programmes, computer commands, design and layout and programme analysis of computer resource in any form.
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> **Section 71. Penalty for misrepresentation.**
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> Whoever makes any misrepresentation to, or suppresses any material fact from, the Controller or the Certifying Authority for obtaining any licence or Digital Signature Certificate, as the case may be. shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to one lakh rupees, or with both."

Here the allegations made in the complaint, prima facie, would not attract any offence punishable under Section 65 and 71 of I.T. Act.

In view of the material produced before the Court, at best, this Court while deciding an application under Section 438 Cr.P.C for grant of anticipatory bail, has to record its *prima facie* satisfaction that there is no *prima facie* material to conclude that the petitioner did commit no offence. But, here, the material on record would show that the petitioner *prima facie* committed an offence punishable under various provisions of Indian Penal Code referred supra.

Learned counsel for the petitioner while contending that an anticipatory bail can be granted to the petitioner in the said circumstances which he pointed out and they have been narrated in the earlier paragraphs and in support of his contention, learned counsel for the petitioner placed reliance on the judgments of

Bhadresh Bipinbhai Sheth v. State of Gujarat and another[1], and Umesh Kumar, IPS v. State of Andhra Pradesh[2].

Learned counsel for the petitioner while contending that no offence is made out against the petitioner and placed reliance on **Umesh Kumar[2]** case.

The principle laid down in the above judgment is that the essential ingredients of Section 468 IPC are (i) that the accused committed forgery; and (ii) that he did so intending that the document forged shall be used for the purpose of "cheating". Under Section 463 IPC, whoever makes any false document with the intention of causing damage or injury to the public or to any person, or with the intention to commit fraud, commits "forgery". Section 464 suggests that a person makes a false document if he - (1) dishonestly or fraudulently makes, signs, seals or executes a document; and (2) does as above with the intention of causing it to be believed that such document was made, signed, sealed or executed, (a) by or by the authority of a person by whom or by whose authority it was not so made, signed, sealed or executed; or (b) at a time at which he knows that it was not made, signed, sealed or executed.

At best, the above judgment would be helpful to quash the proceedings, but at this stage, for considering the application for grant of anticipatory/pre-arrest bail, the principles laid down in the above judgment are of no direct bearing on the issue and that apart, the investigation is in the mid-way, awaiting

[1] (2016) 1 Supreme Court Cases 152
[2] 2012 (2) ALD (Crl.) 314 (AP)

report/information from various countries referred supra. That apart, the damage suffered by the defacto complainant is a question of fact to be decided and at this stage, it has no relevance.

Learned counsel for the petitioner while contending that the petitioner being a political leader of Nellore District who is ill-dispossessed against the defacto complainant, if sent to jail as a pre-trial detention, he would sustain serious loss of reputation, besides hardship and when entire investigation is completed, the Court can consider the request and grant pre-arrest bail to the petitioner. moreover, learned Public Prosecutor for the State of Andhra Pradesh denied completion of investigation while contending that the investigation is in the mid-way, as the Investigating Agency addressed letters to various countries to find out the truth in the genuineness of the signatures on various documents annexed to the complaint and they are awaiting for the response from the other countries.

Section 438 of Cr.P.C deals with a Direction for grant of bail to person apprehending arrest and it reads as follows:

> (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.
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> (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.

(3) If such person is thereafter arrested without warrant by an officer in charge of a police station on such accusation, and is prepared either at the time of attest or at any time while in the custody of such officer to give bail, he shall be released on bail, and if a Magistrate taking cognizance of such offence decides that a warrant should issue in the first instance against that person, he shall issue a bailable warrant in conformity with the direction of the Court under sub-section (1).

On a bare reading of Section 438 of Cr.P.C, it emerges that when a person is apprehending his arrest in connection with crime, having committed a non-bailable offence, he can apply to either Sessions Court or High Court for a direction to release him and on such consideration, the Court may pass appropriate order either granting pre-arrest bail or rejecting the application and the Court has to records its reasons based on the material.

Learned Counsel for the petitioner 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**[1] case. The Apex Court only reiterated the 10 guidelines laid down in **Siddharam Satlingappa Mhetre vs State Of Maharashtra**[3] 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 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.

The learned counsel also drawn the attention of this Court to the principles laid down in **Gurbaksh Singh Sibbia and Ors. v. State of Punjab**[4] and reiterated the duty of the Court while deciding an application filed under Section 438 of Cr.P,.C and the guidelines to be followed for grant of such bail.

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[3] AIR 2011 SC 312
[4] AIR 1980 SC 1632

There is no quarrel regarding the law laid down by the Apex Court in **Bhadresh Bipinbhai Sheth**[1] 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 or do not speak as to how the Court can exercise its judicial discretion in a petition filed under Section 438 Cr.P.C.

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**[4] 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 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**[4] case.

In **Siddharam Satlingappa Mhetre**[3] case, the Apex Court carefully analyzed the principles in various judgments and considering the law on anticipatory bails in other countries, laid down 10 guidelines which are referred supra.

On the strength of the same principles in **Jai Prakash Singh v. State of Bihar**[5], 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.

In view of the law declared in the above judgment, the Courts shall not extend undeserved sympathy to the accused and that the Court while exercising discretion has to follow the settled principles and at the stage of consideration of anticipatory bail while dealing with application for pre-arrest bail, the Court is under obligation to indicate in the order, reasons for *prima facie* coming to the conclusion as to why bail was being granted, particularly, where the accused was charged for having committed serious offences. It is necessary for the Courts dealing with the applications for pre-arrest bail to consider several circumstances. Though, the conclusive finding in regard to the points urged by the petitioners is not accepted by the Court, considering the bail

5 AIR 2012 SC 1676

applications, yet, giving reasons, is different from discussing merits or demerits. At the stage of granting bail, a detailed examination of evidence and elaborate documentation of merits of the case is not to be undertaken, but that does not mean that while granting bail, some reasons for *prima facie* conclusions as to why bail was being granted is required to be indicated.

In **Lavesh v. State (NCT Delhi)**[6] the Apex Court held that conduct of accused immediately after incident as well as after interim protection granted by Court, has to be taken into consideration for the reason that unless free hand was given to investigating agency, particularly, in light of allegations made against the petitioners, the petitioners cannot be enlarged on bail.

In the present facts of the case, the petitioner admitted that he addressed a letter to the Joint Director (Administration), Enforcement Directorate to conduct enquiry against the defacto complaint and his family members based on the alleged forged fake documents annexed to the complaint and circulated those copies of the documents to the media to injure the reputation of the defacto complainant allegedly and to highlight that the defacto complainant being a law maker allegedly violated various laws of the countries.

As per the material available on record, there is no *prima facie* material to conclude that the petitioner did not commit several offences and this reason is for limited purpose of deciding the application. The petitioner being a member of Legislative

[6] (2012) 8 SCC 730

Assembly representing Survepalli Constituency allegedly stooped to the extent of forging documents and producing those documents before the print and electronic media to malign the defacto complainant's reputation. Using those forged documents, the petitioner addressed a letter dated 30.12.2016 to the Joint Director (Administration) Enforcement Directorate in connivance with his two associates A-2 & A-3 allegedly. When such offence is *prima facie* committed, he is disentitled to claim pre-arrest bail, since grant of pre-arrest bail is purely discretionary in nature. However, the background of the petitioner is also to be taken into consideration either to grant pre-arrest bail or reject. In the present case, the petitioner is involved in various other crimes. Crime No.188 of 2016 for the offences punishable under Sections 427, 447, 506, 341 r/w 34 IPC was registered based on the complaint lodged by Chennuru Prasen Kumar Reddy. Crime No.442 of 2016 for the offences punishable under Sections 447 & 427 IPC was registered based on the complaint lodged by Ravilla Anitha Kumari. Crime No.10 of 2014 for the offences punishable under Sections 448, 323, 394, 506(II) r/w 34 IPC was registered based on the complaint lodged by K. Govardhan Reddy, which is allegedly quashed by the High Court, according to the learned counsel for the petitioner Sri O. Manohar Reddy. Another crime was registered against the petitioner and two others. In Crime No.48 of 2014, the petitioner is arrayed as A-10 for the offences punishable under Sections 34(A) & 37(A)(3) of A.P. Excise Act, 1968 and Sections 420, 487, 120(B) r/w 34 IPC on the file of CID Police Station, Hyderabad. The specific allegation made against the petitioner is that he is a sitting MLA (YSRCP) of Sarvepalli Legislative Assembly Constituency who alleged to have committed serious offence of manufacturing spurious liquor and preparing labels from Serial Nos.1988 to 2060 and those bottles were containing sub standard liquor, unfit for human consumption. When the petitioner indulged in such crime of creating fake labels while producing spurious liquor unfit for human consumption, and later committed various offences in various crimes, possibility of committing similar or identical offefnce cannot be ruled out in view of the criminal background of the petitioner.

One of the contentions of the learned Public Prosecutor is that the petitioner though obtained an order from the Sessions Court for surrendering himself before the Sessions Court, filed an application before the Sessions Court seeking permission to surrender, did not obey the order and moreover filed an application. But it was rejected on certain objections and without disclosing the said fact, he approached the High Court and filed the present criminal petition, while W.P.No.83 of 2017 was pending after obtaining interim order 'not to arrest'. But, no copy of the petition is filed before the Sessions Court or Magistrate Court is produced before this Court seeking permission to surrender. However, the writ petition is pending before this Court which disclosed in the petition itself while contending that he is withdrawing the application, as 'not pressed'. But, still the order is awaiting from this Court. Hence, these two contentions are without any substance and the alleged filing of an application for surrender of the petitioner is subsequent to filing of this present petition.

Therefore, it is not a ground to grant anticipatory bail/pre-arrest bail to the petitioner.

In any view of the matter, it is for this Court to strike balance between the fundamental right of individual liberty guaranteed under Article 21 of Constitution of India and societal interest at large.

In **Rajesh Ranjan Yadav @ Pappu Yadav v. CBI through its Director**[7] the Supreme Court held that, a balance has to be struck between right to individual liberty guaranteed under Article 21 of the Constitution of India and interest of society as no right can be absolute. No doubt, in the event of the petitioner's arrest, certainly, his Fundamental Right guaranteed under Article 21 of Constitution of India will be infringed. Fundamental Right under Article 21 of Constitution of India is not an absolute right and such liberty can be deprived of in accordance with law. Arrest of a person in the process of investigation is permissible under the provisions of Criminal Procedure Code and such act of arrest by the police is deprivation of right of liberty of an individual in accordance with law. Therefore, it does not amount to violation of Fundamental Right guaranteed under Article 21 of Constitution of India. To strike a balance between the individual right of liberty and societal interest, the Court must take into consideration the impact of such serious crime, both on the society at large and on the economy of the State.

[7] AIR 2007 SC 451

In **Gurpal Singh v. State through C.B.I**[8] referring the case in **V. Nandanan Vs. DIG of Police (Crime), Hyderabad & another**[9], held that anticipatory bail is not to be granted as a matter of course in all cases where the applicant has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence. Grant or refusal of such bail must depend upon variety of circumstances, the cumulative effect of which must enter the judicial verdict. The power under the Section has to be exercised sparingly and in exceptional cases using the discretion on the facts of each case. An order under Section 438 being an exceptional type there must be a special case made out for passing such an order. It should not be allowed to circumvent the normal procedure of arrest and investigation or to prejudice the investigation. Ulterior motives of harassment and reasonable possibility of the accused not absconding are only some of the considerations. Some little facts may be necessary in the exercise of the discretion to grant or refuse the prayer. Further, the Court held that in exercising the judicial discretion in granting anticipatory bail the court should not be unmindful of the difficulties likely to be faced by the investigating agency and the public interest is likely to be affected thereby.

In **Pukar Ram v. State of Rajasthan**[10] the Supreme Court held that Relevant considerations governing the court's decision in granting anticipatory bail under Section 438 are materially

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[8] 1999(49)DRJ193
[9] 1986 Cri.L.J. 1052
[10] AIR 1985 SC 969

different from those when an application for bail by a person who is arrested in the course of investigation as also by a person who is convicted and his appeal is pending before the higher court and bail is sought during the pendency of the appeal.

Similarly, in **State of Andhra Pradesh v. Bimal Krishna Kundu**[11] the Apex Court observed that, it is disquieting that implications of arming respondents, when they are pitted against this sort of allegations involving well orchestrated conspiracy, with a prearrest bail order, though subject to some conditions, have not been taken into account by the learned Single Judge. We have absolutely no doubt that if respondents are equipped with such an order before they are interrogated by the police it would greatly harm the investigation and would impede the prospects of unearthing all the ramifications involved in the conspiracy. Public interest also would suffer as a consequence.

Relying on all the above judgments, the Delhi High Court in **Gurpal Singh**[8] case held as follows:

> "In the present case, allegations of conspiracy and financial irregularities involving the funds of the bank have been made. The petitioner in collusion with Mr. K. S. Bains and some other persons is alleged to have or is suspected, which cannot be said at this stage to be wholly baseless or motivated, to have derived personal benefits for himself and also for Mr. K. S. Bains by committing financial irregularities and to helping JBML etc. wrongfully and causing loss to the bank. Public interest is involved. In these circumstances, if anticipatory bail is granted, it will thwart investigation and thereby prejudice the case of the prosecution and it may not be possible to unearth

[11] AIR 1997 SC 3589

> fully the gravity of the conspiracy, resultant financial loss to the bank, financial gains, if any, derived by the bank's officers and other companies involved. It will hamper investigation and thereby public interest will suffer if anticipatory bail is granted. The learned Addl. Session Judge has not found it a fit and proper case for granting anticipatory bail."

In view of the law declared by the various Courts, it is the duty of this Court to record its satisfaction whether the petitioner *prima* facie committed an offence or not, the gravity of offence, the possibility of interfering with further investigation, tampering of evidence are the relevant considerations. In the present case, forgery of documents including affixure of seals of foreign countries including forgery of immigration stamp of Government of Malaysia is a serious offence which not only affects the reputation of the country but also creates an impression in the minds of general public that anything can be created to malign anyway. Apart from that, the petitioner being a political leader and Member of Legislative Assembly may not however flee from justice. But, possibilities of interfering with the investigation and threatening the witnesses in the event of his enlargement on anticipatory bail cannot be ruled out, more particularly, because of his criminal background which the learned Public Prosecutor for the State of Andhra Pradesh pointed out and mentioned in the earlier paragraphs. There is also a possibility of committing similar offences while on bail, in view of his previous criminal background. Considering the facts of the present case in different angles, it is difficult for me to exercise discretion to grant anticipatory/pre-arrest bail to the petitioner.

In view of my foregoing discussion, I find no ground to enlarge the petitioner granting anticipatory bail to the petitioner in the event of his arrest in relation to Crime No.521 of 2016 on the file of Nellore Rural Police Station, SPSR Nellore District apprehending his arrest for the offences punishable under Sections 120b, 468, 469 471, 506 IPC and Sections 54 & 71 of Information Technology Act and consequently, the criminal petition is liable to be dismissed.

In view of my foregoing discussion, I find no ground to enlarge the petitioner on pre-arrest bail.

In the result, the criminal petition is dismissed.

Consequently, miscellaneous applications pending if any, shall also stand dismissed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Dated:07-03-2017
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