

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION Nos.1411 AND 1416 OF 2017

COMMON ORDER:

These Criminal Petitions, under Section 438 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'), are filed to grant pre-arrest bail to the petitioners/A.1 to A.3 apprehending their arrest in connection with Cr.No.4 of 2017 of Mills Colony Police Station, Warangal District, registered for the offences punishable under Sections 304-B read with 34 of the Indian Penal Code, 1860 (for short 'I.P.C.') and Sections 3 and 4 of Dowry Prohibition Act, 1961.

The case of the prosecution, in brief, is that one Banka Rajamani, mother of the deceased, lodged a complaint alleging that her elder daughter-Madhavi's marriage was performed on 04.11.2016 with A.1 – Dinesh. At the time of marriage, she agreed to pay an amount of Rs.5,00,000/- towards dowry, but paid only Rs.4,00,000/- presented two tulas of gold and other household articles. Both of them lived happily for sometime. One month later, A.1 along with his Mother Rajeshwari and Sister Divya, A.2 and A.3, subjected her daughter - Madhavi to cruelty for her failure to pay balance of dowry agreed to be paid. While the matter stood, on 01.01.2017 on the occasion of new year, she invited her daughter to her house by phone, but her daughter did not come to her house on the new year day. Thereupon the *de facto* complainant and his younger daughter - Manasa went to the house of A.1 to A.3 at SRR Thota and enquired as to why her daughter did not visit her house, thereupon A.2 mother of A.1 pushed her daughter as the *de facto* complainant failed to pay balance of dowry i.e. Rs.1,00,000/- and thereupon A.3, sister of A.1 abused her daughter, while A.1 threatened that her daughter will not be sent to parents even if she die and if she visits her parents house,

he would give divorce to her daughter, and thereby subjected to cruelty. On account of such unbearable harassment, her daughter entered into her room at 8.30 p.m. on the same day, hanged herself to death with the help of chunni. Noticing the same, her daughter was shifted her to MGM hospital while undergoing treatment. She succumbed to injuries on 04.01.2017 at 2.30 p.m. As she has no male assistance, she could not lodge the complaint immediately, but lodged the complaint after death.

The main contention of the petitioners is that the allegations made in the complaint, at best, would attract the offence punishable under Sections 498-A I.P.C. and due to emotion she committed suicide. Therefore, the petitioners cannot be roped with such offence punishable under Sections 304-B I.P.C. and prayed to enlarge the petitioner on pre-arrest bail.

The learned public prosecutor for the State of Telanagana opposed the contention of the petitioners on the ground that the investigation is not completed and that apart the allegations made in the complaint and nature of incident would disclose that the daughter of the *de facto* complainant committed suicide due to unbearable harassment for her failure to meet the demand for payment of balance of dowry Rs.1,00,000/- and prayed to dismiss the petition.

The facts as narrated in the earlier paragraphs clearly show that the *de facto* complainant agreed to Rs.5,00,000/-, but paid only Rs.4,00,000/- and still balance of Rs.1,00,000/- to be paid as dowry and her daughter was subjected to cruelty for her failure to pay balance of dowry, and in the presence of the *de facto* complainant her daughter-Madhavi was subjected to cruelty for her failure for payment of balance of dowry, which led her to commit suicide.

Therefore, the allegations made in the complaint would clearly disclose that all the three petitioners were responsible for her death.

Moreover, this court cannot exercise its jurisdiction under section 438 Cr.P.C. to enlarge the petitioners on bail in the event of their arrest, unless the court records its satisfaction that there is no *prima facie* case to conclude that the petitioners did commit no offence as held by the Apex Court in **Gurbaksh Singh Sibbia v. State of Punjab**¹.

In the present facts of the case, the marriage of the daughter of the *de facto* complainant was performed on 04.11.2016, whereas her death took place on 04.01.2017 i.e. almost within a span of two months at in-laws house and her death is an unnatural death. In such case, presumption under Section 113-B of Indian Evidence Act, 1872 would apply, and it is a rebuttable presumption, till it is rebutted, the presumption is that the petitioners are responsible for the death.

Therefore, in view of the circumstances of the case and nature of death, it is difficult to conclude that there is no *prima-facie* material to conclude that they committed any offence.

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 Constitutional Bench of the Apex Court in **Gurbaksh Singh Sibbia v. State of Punjab** (supra1), 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

¹ AIR 1980 SC 1632

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 malafides; 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 consideration for grant or refusal of grant 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 laid down by the Apex Court in **Gurbaksh Singh Sibbia v. State of Punjab** (supra1).

Considering the stage of the investigation and nature of allegations, and the presumption under Section 113-B of the Indian Evidence Act, and the law declared by the Apex Court, I find no ground to grant pre-arrest bail to the petitioners in the event of their arrest, at this stage. Consequently, these criminal petitions are liable to be dismissed.

In the result, these criminal petitions are dismissed.

M. SATYANARAYANA MURTHY, J

23.02.2017
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