

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.2742 OF 2017

ORDER:

This Criminal Petition, under Section 438 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'), is filed to grant pre-arrest bail to the petitioners/A.1 to A.5 apprehending their arrest in connection with Crime No.199 of 2016 of G.Konduru Police Station, Krishna District, registered for the offences punishable under Sections 302 and 201 r/w 34 of the Indian Penal Code, 1860 (for short 'I.P.C.').

2) Initially, the case was registered against the petitioners in Crime No.199 of 2016 for the offence punishable under Section 304-A IPC based on the complaint lodged by Shaik Saddam Hussain. The father of the de facto complainant was working as Head Constable and maintaining his family at Vijayawada. On 21.12.2016 on information that his father died in an accident at Government High School, Vellagaleru Village, the de facto complainant went to that place and found the dead body of his father along with motor cycle bearing No.AP 16 CR 7822. Based on the evidence collected during the course of investigation, the Section of law was altered from Section 304 I.P.C to Section 302 I.P.C and other Section 201 of I.P.C.

3) Post mortem certificate is issued on 21.12.2016 by Community Health Center, Mylavaram, wherein doctor noted eight external injuries viz., 1) bleeding from the nose noted, 2) bleeding from the left ear noted, 3) right eye lids swollen with blackish discoloration, 4) A bruise 5 cm X 5 cm over right cheek with blackish discoloration, 5) A swelling 8 cm X 5 cm extending from below the

right ear till right side of neck, 6) A Linear abrasion over front of neck about 3 cm, 7) An abrasion 6 cmX 3 cm over right lower leg above the ankle and 8) a bruise 3 cm X 3 cm over front of chest left side. On opening the chest – Lungs are pale, heart empty, ribs are intact. On opening the abdomen – Liver, kidneys and spleen are pale. Stomach contains partially digested food material. Bladder empty. On opening the skull-hemorrhage noted over right and left temporo parietal areas of skull and opined that cause of death is due to shock and hemorrhage on account of multiple injuries caused by heavy blunt object.

4) Even in the private complaint before the police, the complainant—Saddam Hussein initially concluded that the cause of death might be due to accident or otherwise. But in column No.15 of Inquest report, mediators did not disclose specific reason as to the cause of death. However, the offence allegedly committed by the petitioners is grave in nature, which is punishable with imprisonment of life or capital punishment and that too, the investigation is not completed.

5) When there is no prima facie material against the petitioners to conclude that they committed offences, pre-arrest bail can be granted in view of the principles laid down by the Apex Court in **Gurbaksh Singh Sibbia v. State of Punjab**¹.

Section 438 Cr.P.C deals with 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

¹ AIR 1980 SC 1632

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 think 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.

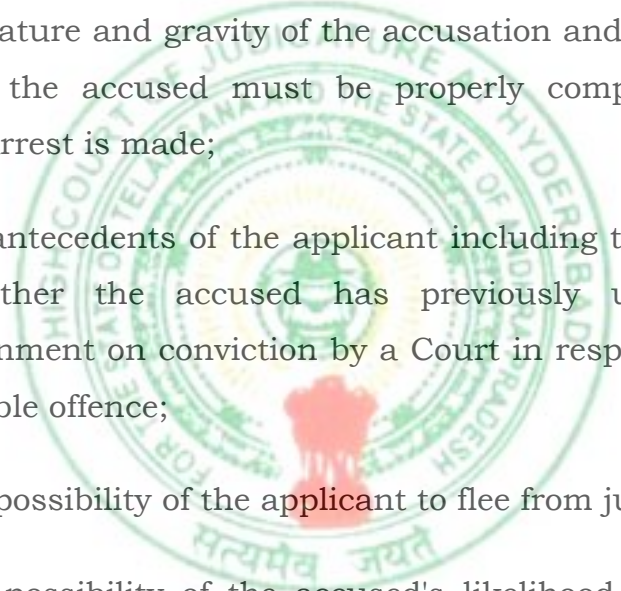
(3) If such person is thereafter arrested without warrant by an officer in charge of a police station on such accusation, and is prepared either at the time of arrest or at any time while in the custody of such officer to give bail, he shall be released on bail, and if a Magistrate taking cognizance 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).

6) 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** (referred supra), 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 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 issued in **Gurbaksh Singh Sibbia v. State of Punjab** (referred supra).

7) For granting pre-arrest bail under Section 438 of Cr.P.C. the Apex Court laid down 10 guidelines in “**Siddharam Satlingappa Mhetre v State Of Maharashtra**²” which are as follows:

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- i. The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;
 - 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;
 - iii. The possibility of the applicant to flee from justice;
 - iv. The possibility of the accused'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 cases 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 cases in which accused is

² AIR 2011 SC 312

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;

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 witness 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.

8) Learned counsel for the petitioners also contended that there are civil disputes, thereby, the *de facto* complainant developed enmity against the petitioners but motive is one of the causes either to kill the people of de facto complainant or to implicate them but it is not a substantive piece of evidence.

9) Nature, seriousness and gravity of the offences and possibility of interference with further investigation, there is every likelihood of threatening witnesses, these are the relevant considerations to be taken, for grant of pre-arrest bail. But in the present case, the investigation is not completed and the material, *prima facie*, does not disclose the cause of death of father of *de facto* complainant whether it is accidental or not. At this stage, if the

petitioners are enlarged on pre-arrest bail, there is every likelihood of interfering with further investigation, therefore, I find it is not a fit case to enlarge the petitioners on bail.

10) In the result, the Criminal Petition is dismissed.

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

M. SATYANARAYANA MURTHY, J

10.04.2017
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HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

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Date:10.04.2017

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