

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.1313 of 2017

ORDER:

The petitioner/A.7 filed the present application under Section 438 Cr.P.C. to release him in the event of his arrest in connection with Crime No.95 of 2016 of Rompicherla Police Station, Guntur District, registered for the offences punishable under Sections 307, 302 and 120-B read with 34 IPC.

2. The *de facto* complainant-Medikonda Venkateswar Reddy filed a report stating that he is a resident of Rompicherla Village and he was blessed with two daughters. His elder daughter was given marriage to his nephew Kali Chinnapareddy about ten years ago. Due to politics in the village, Chaparapu Gopal Reddy and Gelli Brahmareddy were divided into two groups. The *de facto* complainant is supporter of Chaparapu Gopal Reddy and the accused is supporter of Gelli Brahmareddy. The deceased along with two others while proceeding on two different motorbikes, when they reached the scene of offence i.e., at Tungapadu Sapta, one Maruthi Wagnor car came at high speed and hit the motorcycle of the deceased. Padla Subbareddy, Chaparapu Sanjeevareddy, Kallam Sivareddy, Padala Hanimireddy, Chparapu Veeranjaneyareddy were got down from the car armed with axes, long knives and Talvaars. Among them one Padala Subbareddy hacked Chinnapareddy (deceased) with an axe and in the meantime Padala Veerareddy @ Tati Reddy and Chaparapu Sankar Reddy came on a motorcycle shouting as "Levakunda Champandira Naa Kodukuni". Immediately other persons, who are armed with axes and knives, hacked him. On seeing the incident,

the *de facto* skulk away from the scene of offence and lodged a report with police.

3. The main contention of learned counsel for the petitioner is that there is a delay of nine hours in lodging the complaint and it is only an element of consultation and it is purely a political murder and petitioner never participated in the said incident and sought for pre-arrest bail apprehending his arrest in connection with the above crime.

4. The learned Additional Public Prosecutor for the State of Andhra Pradesh contended that the eyewitness examined by Investigating Agency under Section 161 Cr.P.C., discloses about participation of the petitioner and mere failure to register a crime under Section 109 Cr.P.C. by itself is not a sufficient ground to grant pre-arrest bail. When the petitioner along with one Veera Reddy came on motorcycle and instigated the other accused, who are armed with axes and knives, and on such instigation the other accused hacked the deceased, which resulted in his death and a crime was registered against the petitioner and others for the offences punishable under Sections 302 and 120-B read with 34 IPC. Moreover, the specific overt acts attributed against the petitioner show that he instigated some of the accused persons to kill the deceased and then only they hacked with axes and knives.

5. No doubt, there is a delay in lodging the complaint and the *de facto* is an eyewitness, who directly witnessed the incident. The normal conduct of a person, who witnessed such a incident has to be visualized when son-in-law of the *de facto* was murdered and it

is difficult for him to reach the police station and the hurry is only to escape from the hands of assailants.

6. But, the delay may be a ground, if not explained, for acquittal after trial. But at this stage, it is difficult to conclude that the delay in lodging the complaint is on account of consultation. Grant of pre-arrest bail is not automatic and it is a matter of exception. Unless the petitioner shows some exceptional circumstances, the he is not entitled to grant of pre-arrest bail.

7. 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**⁵ 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; told, equally, 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**⁵ 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.

8. In the facts and circumstances of the case, there is a specific overt act against the petitioner, who is A.7, that he instigated one Veerareddy, who hacked the deceased, which resulted in his death later. Therefore, I concluded that there is *prima facie* material that the petitioner had committed offences punishable under Sections 302 and 120-B read with 34 IPC. I find no ground to enlarge the

petitioner on pre-arrest bail and the petition is liable to be dismissed.

9. In result, the Criminal Petition is dismissed.

M.SATYANARAYANA MURTHY, J

FEBRUARY 22, 2017
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THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY



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Date: 22.02.2017

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