

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.1842 of 2017

ORDER:

This criminal petition under Section 438 Cr.P.C. is filed by the petitioner/accused No.2 in crime No.189 of 2016 of Chilakaluripeta Town Police Station, Guntur District, registered for the offences punishable under Sections 406 and 420 read with Section 34 I.P.C. for grant of pre-arrest bail apprehending his arrest in the above crime.

2. The *de facto* complainant – Venkateswarlu Burri – the proprietor of the finance company viz., Sri Venkata Ramana Auto Consultancy, lodged a complaint alleging that the petitioner/accused No.2, who is the Manager of Bajaj Showroom, Martur, along with accused Nos.1 and 3 misappropriated amounts to a tune of Rs.25 lakhs, by producing finance agreement books/TR books with false ID proofs of the customers and thereby, caused substantial loss to him.

3. The main contention of the learned counsel for the petitioner/accused No.2 is that though the petitioner is the Manager of Bajaj Showroom, Martur, he is no way concerned with the finance affairs of the Showroom and therefore, the question of commission of the aforementioned offences does not arise and prays to enlarge him on bail.

4. The learned Public Prosecutor (AP) appearing for the respondent-State, on instructions, would contend that during investigation, the Police examined 11 witnesses so far, that L.W.8 is the main witness, who stated that the petitioner/accused No.2 in collusion with accused Nos.1 and 3 misappropriated huge amount of Rs.25 lakhs, by producing finance

agreement books/TR books with fake ID proofs of the customers and therefore, the petitioner/accused No.2 is not entitled to be released on bail.

5. The petitioner/accused No.2 is admittedly the Manager, Bajaj Showroom, Martur. According to him, he is no way concerned with the finance affairs of the Showroom. The contention of the learned counsel for the petitioner/accused No.2 is that accused No.1 alone is responsible, but not the petitioner/accused No.2 as no signatures of him were found anywhere, that no specific details were furnished in the entire complaint, except making bald allegations against his client and therefore, in the absence of details, the petitioner/accused No.2 cannot be made liable for punishment for the alleged offences. The learned counsel further contended that his client is being subjected to harassment by the Police and is being forced to pay the alleged misappropriated amounts and therefore, S.H.O. may be directed to enlarge the petitioner on bail in the event of arrest in the above crime.

6. As seen from the material on record, the petitioner, being the Manager of the Bajaj Showroom, Martur, played key role with regard to the finance agreements of the vehicles along with the other two accused. Though at this stage, it is difficult to conclude as to who committed the offence and who is mainly responsible, as per the statements of the witnesses recorded by the Police, all the three accused colluded, worked together and committed serious offence of misappropriation of amount to the tune of Rs.25 lakhs. Therefore, it is difficult for me to conclude that the petitioner/accused No.2 did not commit the alleged offence.

7. The basic requirement of the Court to grant pre-arrest bail is to come to the conclusion that the accused did not commit any offence, that there is no possibility of tampering of evidence or interference with the further investigation or threatening of any witness, otherwise, he may flee from justice. The main purpose of granting bails imposing conditions is to secure presence of the accused before the Court during the trial. Here, the petitioner/accused No.2 allegedly committed a serious offence of misappropriation of amount being the Manager of Bajaj Showroom, Martur and that apart, the investigation agency collected some material to conclude, *prima facie*, that the petitioner/accused No.2 along with the other two accused committed the alleged offence, by producing finance agreement books/TR books with fake ID proofs.

8. 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*¹ 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. In the subsequent decision in *Siddharam Satlingappa*

¹ AIR 1980 SC 1632

Mhetre v State Of Maharashtra², the Apex Court laid down 10 guidelines for granting pre-arrest bail under Section 438 of Cr.P.C., 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;
- 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 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;

² AIR 2011 SC 312

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.

9. In view of the above guidelines issued by the Apex Court, unless there is any material on record to conclude, *prima facie*, that the accused did commit no offence, he cannot be denied bail and if there is any doubt about his escape from justice, the Court cannot grant bail. In the facts and circumstances of the present case, I find, *prima facie*, material to conclude that the petitioner/accused No.2 committed the alleged offence and as the investigation is not completed, there is a possibility of tampering of the evidence and interference with the further investigation, in such case, pre-arrest bail cannot be granted.

10. As I find no special circumstances for granting pre-arrest bail to the petitioner/accused No.2, the criminal petition is liable to be dismissed.

11. The Criminal Petition is, accordingly, dismissed.

M.SATYANARAYANA MURTHY, J

16th March, 2017

GHN