

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.2386 of 2017

ORDER:

This Criminal Petition under Sections 438 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'), is filed to enlarge the petitioners/A.1 to A.3 on pre-arrest bail since they are apprehending arrest in connection with Cr.No.90 of 2016 on the file of Damarigidda Police Station, Mahabubnagar District, registered for the offences punishable under Sections 341, 324 r/w 34 IPC.

The counsel for petitioners mainly contended that there was no mention about the names of these petitioners in the complaint or in the FIR and in the absence of disclosure of the names of the assailants, the petitioners are entitled to claim pre-arrest bail. He also further contended that entire investigation was completed and rough sketch of the scene was prepared and therefore, there is no occasion to investigate the case. In such a case, the petitioners are entitled to claim pre-arrest bail. Finally, it is contended that the petitioners and *de facto* complainant are related to one another and due to political pressure, they got admit and obtained the medical certificate from the concerned hospital to rope the petitioners in serious offences punishable under Sections 341, 324 r/w 34 IPC and prayed to enlarge the petitioners on pre-arrest bail.

The learned Public Prosecutor for the State of Telangana would contend that the same petitioners earlier filed CrI.M.P.No.1321 of 2017, which ended in dismissal by Order dt. 22.02.2017 and subsequent dismissal of the application, there are

no major changed circumstances and therefore, the petitioners are not entitled to claim pre-arrest bail and prayed for dismissal of the petition.

The main endeavour of the counsel for the petitioners is that the names of the petitioners were not mentioned in the FIR or in the complaint made by the *de facto* complainant with Damaragidda Police Station and in support of his contentions, he placed reliance on three judgments i.e., ***Ramesh v State of Karnataka***¹, ***Pinki Chauhan v. State of NCT of Delhi***² and ***Surrinder Kumar v. State of Haryana***³.

In ***Ramesh's*** case (1 supra), the High Court of Karnataka held that the names of the assailants were not mentioned in the FIR and the allegations made in the complaint that some unknown persons caused injuries, which is sufficient to conclude that the petitioners are not the persons, who committed the offence, and hence, they are entitled to claim pre-arrest bail. In ***Pinki Chauhan's case*** (2 supra) and ***Surrinder Kumar's*** case, the High Courts laid the same rule as held in ***Ramesh's*** case (1 supra). Thus, the consistent principle laid down in all these citations relied on by the petitioners is that when the names of the assailants were not disclosed in the complaint or FIR by the police based on the complaint given by the *de facto* complainant, the petitioners are entitled to claim pre-arrest bail.

It is the case of the *de facto* complainant from the beginning that while he was proceeding on motor cycle, three persons

¹ 2014 LS (Kar) 2352,

² 2013(LS(Del) 2152

³ 1989 LS (P&H) 1021

stopped his vehicle and used pepper spray and immediately, he fell down from the motor cycle and one among the three beat him with an iron rod on his right leg and caused bleeding injury. When a person proceeding on a motor cycle and he was stopped suddenly by three persons and used pepper spray, it is difficult for any such person to identify the assailants at the time of incident. Therefore, the facts of the present case are distinguishable with the facts of the above three citations, referred to above, and that apart, in the present case, there is no possibility of seeing the assailants on account of use of pepper spray, which certainly causes inconvenience to open the eyes at the time of incident. Therefore, it is not a ground to grant pre-arrest bail. Therefore, failure to mention the names of the assailants in the report by then is not a ground to grant pre-arrest bail to the petitioners.

The other contentions raised before this Court is that the Medical Certificate was created with the help of politicians on account of political support, but it is not a ground and even according to Medical Certificate dt. 21.01.2017, the *de facto* complainant was admitted in the hospital with an injury on 01.11.2016 and certified on examination that the injuries were grave in nature and it is of 10 days old by 17.11.2016. The incident allegedly occurred on 01.11.2016 at 10.30 Am. In such a case, the age of injury as on 17.11.2016 is almost correlating and it is an opinion stage and it cannot be formed as a ground for grant of pre-arrest bail.

Admittedly, these petitioners earlier filed a petition under Section 438 Cr.P.C. in Crl.P.No.1321 of 2017, which was dismissed

by Order dt. 22.02.2017 on elaborate consideration of the material, and apart from, there are no major changed circumstances from the date of dismissal of earlier application.

The Apex Court in ***State of Tamil Nadu v. S.A. Raja***, held that filing of successive bail applications without any major changed circumstances would not serve any purpose and in the absence of any major changed circumstances subsequent to the dismissal of earlier bail application, this Court cannot grant pre-arrest bail since it amounts to bad precedent, as held by the Apex Court in ***State of Tamil Nadu v. S.A. Raja***⁴. In another judgment in ***Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav***⁵, the same principle is reiterated by the Apex Court.

In view of the law declared by the Apex Court in the above referred citations, unless there are major changed circumstances in the investigation, the Court cannot grant pre-arrest bail on the same facts. Therefore, I find that it is not a fit case to enlarge the petitioners on pre-arrest bail at this stage since it is a renewal of earlier request without any major changed circumstances. Hence, this Criminal Petition is liable to be dismissed.

In the result, this Criminal Petition is dismissed.

Miscellaneous petitions, if any, pending in this case, shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 28.03.2017
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⁴ (2005) 8 Supreme Court Cases 380

⁵ 2004 Cril LJ 1796



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Dt.28-03-2017

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