

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.1931 of 2017

ORDER:

This Criminal Petition, under Section 438 of the Criminal Procedure Code, 1973, is filed by the petitioners to enlarge them on bail, in the event of their arrest, as they are apprehending arrest in connection with Crime No.7 of 2017 on the file of Therlam Police Station, Vizianagaram District, registered for the offences punishable under Sections 498-A IPC.

The petitioner Nos. 1 and 2 are the mother-in-law and father-in-law of the *de facto complainant*—Boddu Ramalakshmi and her marriage with A.1 was performed about seven years back and they lived happily for some time and later her husband used to subject her to cruelty in different ways. With a view to get rid of her, on one day, her mother-in-law, first petitioner, and her father-in-law/second petitioner herein, along with her sister-in-law subjected her to cruelty and on one day her husband made an attempt to stab her with a knife, thereupon, she raised cries to attract the attention of the neighbour and on hearing cries, neighbour came and pulled the knife from the hands of her husband. Thereupon, due to fear, she left the house and went to her parents house. Thus, the specific overtacts attributed against these petitioners are that she was beaten severely by her husband and in laws and her husband made an attempt to stab her. If really, the incident of beating her severely is occurred, certainly, it would attract an offence punishable under Section 498-A IPC. On the other hand, making an attempt by A.1 with the aid of A.2 and A.3, the petitioners herein, would *prima facie* attract an offence punishable under Section 498-A IPC.

Grant of pre-arrest bail is not a matter of course, it is a matter of exception. Unless some exceptional circumstances are shown, the petitioners cannot be enlarged on pre-arrest bail.

In *Gurbaksh Singh Sibbia v. State of Punjab*¹, the Constitutional Bench held that 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

¹ AIR 1980 SC 1632

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).

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:

- 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.

² AIR 2011 SC 312

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;

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.

In view of the guidelines laid down by the Apex Court, the gravity of the offences, the antecedents of the applicant, possibility of the applicant to flee from justice and the possibility of the accused to repeat similar offences and interfering with the investigation, interest of impact on society are the main consideration and on 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 and the Court has to consider reasonable apprehension of tampering of the witnesses or apprehension of threat to the complainant.

In the present case, only five witnesses were examined and it is submitted by the learned Public Prosecutor for the State of Andhra Pradesh that the investigating agency is proposing to take steps to alter the section

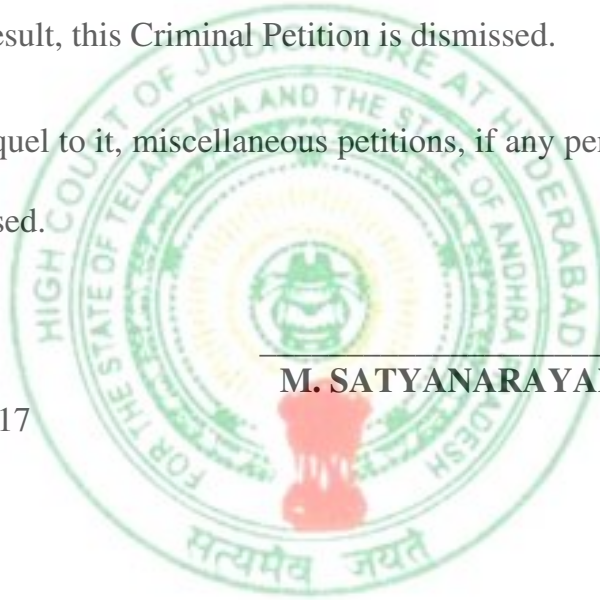
of law to include 307 IPC, but at this stage, no such steps were taken. In any view of the matter, the overtacts specifically attributed to the petitioners are that they beat the complainant severely. Therefore, such acts would *prima facie* attract an offence punishable under Section 498-A IPC and taking into consideration of the gravity of the offence and the impact on the society and to strike balance between societal impact and individual liberty of the petitioners, I find that it is not a fit case to grant pre-arrest bail to the petitioners.

In the result, this Criminal Petition is dismissed.

As a sequel to it, miscellaneous petitions, if any pending in this case, shall stand closed.

13th March, 2017
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M. SATYANARAYANA MURTHY, J



THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY



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Dt. 13-03-2017

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