THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.1597 OF 2017

ORDER:

This criminal petition is filed under Section 438 Cr.P.C by the petitioners/Accused 2 & 4 in Crime No.11 of 2017 on the file of Abids Police Station, Hyderabad seeking direction against the Station House Officer, Abids to release the petitioners on bail in the event of their arrest in connection with the above crime for the offences punishable under Sections 406,420 & 506 IPC.

The brief facts of the case are that the defacto complainant own a cinema theatre by name Milan Theatre at Asif Nagar. In the year 2005 one Mr. M. Srinivas Rao S/o late M. Panduranga Rao R/o Turab Nagar, Ameerpet, Amberpet, Hyderabad, approached her for running canteen and parking at Milan theatre. Thereupon, the defacto complainant and M. Srinivas Rao entered into lease agreement with an understanding to pay Rs.24,000/- per month and he deposited Rs.18,00,000/- as a security deposit which shall be refundable at the time of termination of lease agreement. The theatre ran for 15 months without any inconvenience. Later, due to financial problem they could not run the cinema theatre and they closed the said theatre without any intimation to Mr. M. Srinivas Rao. When he requested the defacto complainant to repay his deposit amount, she paid him Rs.1,80,000/- and assured him that after selling their house No.5-4-682/B, Kattal Mandi, Hyderabad and she issued receipt. Later, the defacto complainant settled the financial issues by sale of cinema theatre and did not repay the balance of deposited advance amount of Rs.16,20,000/- to Mr. M.

Srinivas Rao. When Mr. M. Srinivas Rao used to call the defacto complainant regularly for clearing the financial issues, the defacto complainant approached one Mr. Ayub Khan and Miraz Khan who assured the defacto complainant to settle her issue. Thereafter, Mr. Ayub Khan and Miraz Khan managed to sell the Kattal Mandi property to one Mr. Uttam Kumar Jain and after sale of the said property, they took Rs.32 lakhs for settling their financial issue with Mr. M. Srinivas Rao. Later, on repeated calls from Mr. M. Srinivas Rao, the defacto complainant came to know that Mr. Ayub Khan and Miraz Khan cheated her by taking Rs.32 lakhs and not settled the financial issue with Mr. M. Srinivas Rao. When she asked about he said issue, Mr. Ayub Khan and Miraz Khan, both threatened her that they will kill her and her family members if they ask about money and also threatened not to reveal the matter to others. During investigation, the investigating agency found that Mr. Ayub Khan and Miraz Khan joined hands with the present petitioners to cheat the defacto complainant. But, as seen from the material on record, the petitioners herein are only media personnel and taking advantage of their position as media personnel, they created everything and they are responsible for this entire episode.

Learned counsel for the petitioners contended that there was no reference about the names of the petitioners herein in the F.I.R and in the absence of any allegation, they cannot be arrested and sought for pre-arrest bail. But, the learned Public Prosecutor for the State of Telangana would contend that Ayub Khan is a gangster and the present petitioners are his followers who played major role. Learned counsel for the petitioners drawn attention of this Court to Part-II C.D to conclude that these petitioners also played equal role in the incident and prayed for dismissal of the criminal petition.

No doubt, these petitioners are undoubtedly media personnel, but the statements recorded by police during investigation under Section 161(3) Cr.P.C would disclose that the first petitioner is a reporter in ZEE TV channel and the second petitioner was introduced by the first petitioner along with others. Both the petitioners acted as mediators between the defacto complainant, her husband and took them to Ayub Khan demanding 30% commission for settling the dispute. But, due to intervention of the first petitioner, the defacto complainant agreed to pay 20% and accordingly the property was sold and as per settlement, 80% of sale consideration has to be paid to her and 20% shall be paid to the said Ayub Khan and others, who acted as mediators for settling the issue. For processing the agreement, the petitioners obtained the signature of the defacto complainant on Rs.100/- stamp paper and taking advantage of it, they collected Rs.25 lakhs from the petitioner. The property was sold to one Uttam Kumar Jain for Rs.2,40,00,000/- and on sale, Rs.60,00,000/- was collected by Ayub Khan and Miraz Khan each. Thereafter, the petitioners along with other two persons demanded Rs.7 lakhs each for settlement of issue. But Mr. M. Srinivas Rao informed that he never received any amount and demanded for repayment of his balance of deposit amount. Then, the defacto complainant informed that she paid the amount through the said persons, but, they did not pay the amount. Thus, the petitioners along with others cheated the defacto complainant by collecting huge amount from her. The statement of the defacto complainant would go to show that these petitioners are the kingpins who are responsible for this entire episode of settlement and collecting huge amount from the defacto complainant.

The petitioners are the reporters in TV channel and they are expected to maintain high degree of integrity. But, by taking advantage of their position as TV reporters, they became mediators and collected huge amount and such persons who are expected to maintain high degree of integrity have stooped to such a stage of cheating the public by taking advantage of their position as reports, who does not deserve any sympathy and this Court cannot exercise its discretion to grant pre-arrest bail to these petitioners, as there is every possibility of committing similar offences, if they are enlarged on pre-arrest bail, interfering with further investigation. Further, there is every possibility of threatening the witnesses, since the investigation is in the mid-way.

However, the law regarding grant of anticipatory bail is elaborately discussed by the Constitution Bench of the Apex Court in **Gurbaksh Singh Sibbia and Ors. v. State of Punjab**[1] 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

[1] AIR 1980 SC 1632

proposed accusation appears to be actuated by mala fides; 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 concern for grant or refusal 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, 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**[1] case.

In view of the principle laid down by the Constitutional Bench of the Supreme Court in **Gurbaksh Singh Sibbia**[1] case, discretion has to be exercised by this Court by taking into consideration the facts and circumstances of the case and the seriousness of the offence. Further, the Court has to consider the gravity and seriousness of the offences and its impact on the society, possibility of the petitioners in interfering with further investigation and threatening of witnesses. Here, the petitioners are media personnel and they are the main accused in the entire incident. That apart, only few of the witnesses have been examined during investigation till today and if the petitioners herein are enlarged on bail, they may go to any extent of threatening the witnesses and reporting false news or demand for money by taking advantage of their position and also force the police to complete investigation. Therefore, in these set of circumstances, I am unable to exercise discretion of granting pre-arrest bail in favour of the petitioners. Hence, I find no ground to enlarge the petitioners on bail.

In the result, the petition is dismissed. No costs.

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

JUSTICE M. SATYANARAYANA MURTHY

Dated 30.01.2017
SP